

**ANNEX**

*to the*  
**COMMUNICATION TO THE COMMISSION**

**Endorsement of the content of a draft Commission Regulation declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, amending Regulations (EU) 2022/2472, (EU) 2022/2473, and (EU) XX/XX [Transport Block Exemption Regulation]**

**DRAFT COMMISSION REGULATION (EU) .../...**

**of XXX**

**declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, amending Regulations (EU) 2022/2472, (EU) 2022/2473, and (EU) XX/XX [Transport Block Exemption Regulation]**

(Text with EEA relevance)

# DRAFT COMMISSION REGULATION (EU) .../...

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**declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, amending Regulations (EU) 2022/2472, (EU) 2022/2473, and (EU) XX/XX [Transport Block Exemption Regulation]**

(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 (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid<sup>1</sup>, and in particular Article 1(1), points (a) and (b), thereof,

After consulting the Advisory Committee on State aid,

Whereas:

## CHAPTER I

### COMMON PROVISIONS

#### *Article 1*

##### *Subject matter and scope*

1. This Regulation sets out exemptions to the obligation for Member States to notify the European Commission of any plans to grant State aid pursuant to Article 108(3) of the Treaty and shall apply to the categories of aid listed in Chapter III.
2. This Regulation shall not apply to:
  - (a) aid granted in the sectors of primary agricultural production or primary production of fishery and aquaculture products, where the aid amount is fixed on the basis of price or quantity;

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<sup>1</sup> OJ L 248, 24.9.2015, p. 1.

- (b) aid granted in the sectors of processing and marketing of agricultural, fishery and aquaculture products, where the amount of the aid is fixed on the basis of the price or quantity either of the final product or of such products purchased from primary producers;
- (c) aid granted in the fishery and aquaculture sector under Article 15, Article 20, Article 51, Article 52, Article 55, Article 80 and Section 10 for:
  - (i) the purchase of fishing vessels;
  - (ii) the modernisation or replacement of main or ancillary engines of fishing vessels;
  - (iii) operations increasing the fishing capacity of a fishing vessel or equipment increasing the ability of a fishing vessel to find fish;
  - (iv) the construction of new fishing vessels or importation of fishing vessels;
  - (v) the permanent or temporary cessation of fishing activities with the exception of aid that meets the conditions laid down in Articles 20 and 21 of Regulation (EU) 2021/1139 of the European Parliament and of the Council<sup>2</sup>;
  - (vi) exploratory fishing;
  - (vii) the transfer of ownership of a business;
  - (viii) direct restocking, unless explicitly provided for as a conservation measure by a Union legal act or in the case of experimental restocking;
  - (ix) fishing ports and auction halls.
- (d) aid granted under Article 15, Article 20, Article 51, Article 52, Article 55 and Article 80 to an undertaking active in the fishery and aquaculture sector that:
  - (i) has committed a serious infringement under Article 42 of Council Regulation (EC) No 1005/2008<sup>3</sup> or Article 90 of Regulation (EC) No 1224/2009<sup>4</sup>;

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<sup>2</sup> Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (OJ L 247, 13.7.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/1139/oj>).

<sup>3</sup> Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. (OJ L 286, 29.10.2008, p. 1).

<sup>4</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC)

- (ii) has been involved in the operation, management or ownership of a fishing vessel included in the Union Illegal, unreported and unregulated fishing vessel list as set out in Article 40, point (3), of Regulation (EC) No 1005/2008, or of a vessel flying the flag of countries identified as non-cooperating third countries as set out in Article 33 of that Regulation.
- (e) and aid granted under Article 15, Article 20, Article 51, Article 52 and Article 55 to an undertaking active in the aquaculture sector that has committed any of the environmental offences set out in Articles 3 and 4 of Directive 2008/99/EC of the European Parliament and of the Council<sup>5</sup>.
- (f) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision 2010/787/EU<sup>6</sup>.
- 3. Where an undertaking is active in excluded sectors and in sectors which fall within the scope of this Regulation, this Regulation shall apply to aid granted in respect of the latter sectors or activities, if 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.
- 4. This Regulation shall not apply to:
  - (a) aid schemes of a Member State which do not explicitly exclude the payment of individual aid to an undertaking subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market, with the exception of aid for European territorial cooperation covered by Article 18, aid for community-led local development ('CLLD') projects covered by Article 19(2), aid to make good the damage caused by certain natural disasters covered by Article 68 and aid involved in financial products supported by the InvestEU Fund established by Regulation (EU) 2021/523 of the European Parliament and of the Council<sup>7</sup> and covered by Section 10 of Chapter III;
  - (b) ad hoc aid in favour of an undertaking as referred to in point (a).

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No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006. (OJ L 343, 22.12.2009, p. 1).

<sup>5</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

<sup>6</sup> Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24).

<sup>7</sup> Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30).

5. This Regulation shall not apply to aid to undertakings in difficulty. However, it shall apply to the following categories of aid, if the undertakings in difficulty are not treated more favourably than other undertakings:
- (a) aid to SMEs in existence for less than three years, if they qualify as undertakings in difficulty under Article 2, point (32)(a) or (b);
  - (b) aid to credit institutions as defined in Article 2, point (2), of Directive 2014/59/EU as well as insurance and reinsurance undertakings as defined in Article 13, points (1) and (4), of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009<sup>8</sup>;
  - (c) regional operating aid schemes covered by Article 16;
  - (d) aid schemes to SMEs participating in CLLD projects covered by Article 19(2);
  - (e) risk finance aid covered by Article 25 or Article 25 to undertakings qualifying as undertakings in difficulty under Article 2, point(32)(a) or (b);
  - (f) aid schemes for young enterprises and start-ups covered by Article 29;
  - (g) aid for research and development and innovation under Chapter III, Section 4, to undertakings which qualify as innovative enterprises under Article 2, point (89) and which are unlisted and have been operating for less than 10 years following their registration;
  - (h) aid in the form of reductions in taxes under Council Directive 2003/96/EC of 27 October 2003<sup>9</sup> covered by Article 61;
  - (i) aid schemes to make good the damage caused by certain natural disasters covered by Article 68;
  - (j) aid to SMEs and small mid-caps under Article 82(10) and Article 83;
  - (k) aid to financial intermediaries under Article 17, Article 25, Article 26, Article 29 and Article 56 as well as Section 10 of Chapter III.
6. This Regulation shall not apply to 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 the following:

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<sup>8</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (OJ L 335 17.12.2009, p. 1 , ELI: <http://data.europa.eu/eli/dir/2009/138/2025-01-17>).

<sup>9</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

- (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 granting or 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 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 measures restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.
7. Member States may choose, where applicable, to grant aid in compliance with this Regulation or with other block exemption regulations.

## *Article 2*

### *Definitions*

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

#### **Definitions of terms that first appear in Chapter I**

- (1) ‘aid’ or ‘State aid’ means any measure meeting all the criteria set out in Article 107(1) of the Treaty;
- (2) ‘small and medium-sized enterprises’ or ‘SMEs’ means undertakings meeting the criteria set out in Annex I;
- (3) ‘undertaking’ or ‘single undertaking’ means any entity engaged in an economic activity. Several separate legal entities may be considered to form one economic unit, and therefore one undertaking, because of controlling shares and other functional, economic and organic links. The mere fact of holding shares, even controlling shareholdings, is insufficient to characterise such a link;
- (4) ‘operating aid’ means aid to reduce an undertaking's operating costs , but excluding depreciation charges and the costs of financing related to an investment that benefited from investment aid;
- (5) ‘operating costs’ means categories of current costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, depreciation charges and costs of financing;
- (6) ‘environmental protection’ means any action or activity designed to reduce or prevent pollution, negative environmental impacts or other damage to physical

surroundings (including to air, water and soil), ecosystems or natural resources by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials and increase efficiencies;

- (7) ‘climate resilience’ means the capacity of interconnected social, economic and ecological systems to cope with a hazardous climate event, climate trend or climate disturbance, responding or reorganizing in ways that maintain their essential function, identity and structure. An increase in the level of climate resilience must be demonstrated in the form of a higher adaptive capacity or lower vulnerability to climate impacts;
- (8) ‘ecosystem’ means ecosystem as defined in Article 3, point (1), of Regulation (EU) 2024/1991 of the European Parliament and of the Council<sup>10</sup>;
- (9) ‘biodiversity’ means biodiversity as defined in Article 2, point (15), of Regulation (EU) 2020/852;
- (10) ‘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;
- (11) ‘disadvantaged worker’ means any person who:
- (a) has not been in regular paid employment for the previous six months; or
  - (b) is between 15 and 29 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 their first regular paid employment; or
  - (d) is over 50 years of age; or
  - (e) lives as a single adult with one or more dependents; or

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<sup>10</sup> Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869.

- (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 their linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment; or
- (h) in the preceding 48 months has been granted refugee status or subsidiary protection status within the meaning of the Directive 2011/95 or is applicant for international protection within the meaning of the same directive;
- (i) has been released from detention in the preceding 24 months; or
- (j) is a former addicted substance user who has followed a rehabilitation programme in the preceding 24 months;
- (k) belongs to a category of workers with an unemployment rate that is doubled the national average unemployment rate;
- (12) ‘transport’ means transport of passengers by aircraft, maritime transport, road, rail, or by inland waterway or freight transport services for hire or reward;
- (13) ‘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;
- (14) ‘outermost regions’ means regions as defined in Article 349 of the Treaty;
- (15) ‘sparsely populated areas’ means areas which are recognised by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;
- (16) ‘broadband infrastructure’ means a broadband network without any active component and comprises the physical infrastructure (including ducts, inspection chambers, manholes, cabinets, antenna installations, towers and poles), and cables (including dark fibre and copper cables);
- (17) ‘ducts’ means underground pipes or conduits used to house (fibre, copper or coax) cables of a broadband network.
- (18) ‘marketing of agricultural products’ means holding or displaying 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;

- (19) ‘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;
- (20) ‘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;
- (21) ‘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<sup>11</sup>;
- (22) ‘fishery and aquaculture products’ means the products defined in Article 5, points (a) and (b), of Regulation (EU) No 1379/2013 of the European Parliament and of the Council;
- (23) ‘primary production of fishery and aquaculture products’ means all operations relating to the fishing, rearing or cultivation of aquatic organisms, as well as on-farm or on-board activities necessary for preparing an animal or plant for the first sale, including cutting, filleting or freezing, and the first sale to resellers or processors;
- (24) ‘processing and marketing of fishery and aquaculture products’ means all operations, including handling, treatment and transformation, performed following the time of landing – or harvesting in case of aquaculture – that result in a processed product, as well as distribution thereof;
- (25) ‘fishery and aquaculture sector’ means the sector of the economy which comprises all activities of production, processing and marketing of fishery or aquaculture products;
- (26) ‘fishing capacity’ means a vessel’s tonnage in GT (Gross Tonnage) and its power in kW (kilowatt) as defined in Articles 4 and 5 of Regulation (EU) 2017/1130 of the European Parliament and of the Council<sup>12</sup>;
- (27) ‘fishing port’ means a maritime or inland area of land and water which is officially recognised by a Member State and made up of such infrastructure and equipment so as to permit, mainly, the reception of fishing vessels, loading and unloading their catches, the storage, receipt and delivery of those catches and the embarkation and disembarkation of fishers;

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

<sup>12</sup> Regulation (EU) 2017/1130 of the European Parliament and of the Council of 14 June 2017 defining characteristics for fishing vessels. (OJ L 169, 30.6.2017, p. 1).

- (28) ‘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<sup>13</sup>;
- (29) ‘individual aid’ means:
- (a) ad hoc aid; and
  - (b) awards of aid to individual beneficiaries on the basis of an aid scheme;
- (30) ‘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;
- (31) ‘ad hoc aid’ means aid not granted on the basis of an aid scheme;
- (32) ‘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, 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 equity 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 to Directive 2013/34/EU of the European Parliament and of the Council<sup>14</sup> and ‘share capital’ includes, where relevant, any share premium.
  - (b) In the case of a company where at least some of its members have unlimited liability for the debt of the company, 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 of its members have unlimited liability for the debt of the company’ refers in particular to the types of company mentioned in Annex II to Directive 2013/34/EU.

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<sup>13</sup> OJ L 336, 21.12.2010, p. 24.

<sup>14</sup> 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 (OJ L 182, 29.6.2013, p. 19).

- (c) Where the undertaking is subject to collective insolvency proceedings or meets the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
- (d) In the case of an undertaking that is not an SME, where, for the past two years:
  - (i) the undertaking's book debt to equity ratio has been greater than 7.5 and
  - (ii) the undertaking's earnings before interest, taxes, depreciation, and amortisation (EBITDA) interest coverage ratio has been below 1.
- (e) 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.
- (33) 'financial intermediary' means any financial institution regardless of its form and ownership, including funds of funds, private investment funds, public investment funds, banks, micro-finance institutions and guarantee societies;
- (34) 'start-up' means [definition to be determined];
- (35) 'dedicated infrastructure' means infrastructure built for one or a small group of *ex ante* identifiable users and tailored to their needs.
- (36) '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;
- (37) 'gross grant equivalent' means the discounted amount of the aid if it had been provided in the form of a grant to the beneficiary, before taxes or other charges, as calculated at the date of award of the aid on the basis of the reference rate applicable on that date;
- (38) 'start of works' means either the start of construction works relating to the investment, or the first legally binding commitment to order equipment, whichever occurs first. Buying or renting land, as well as preparatory works such as obtaining permits and conducting feasibility studies are not considered as the start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment;
- (39) 'large enterprises' means undertakings not meeting the criteria set out in Annex I;
- (40) '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;
- (41) 'aid intensity' means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;

- (42) ‘simplified cost options’ means the best possible approximation of the real eligible costs and may involve the use of unit costs, lump sums or flat-rate financing;
- (43) ‘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;
- (44) ‘wage cost’ means the gross wage (a) before tax, and (b) including (i) the compulsory contributions, such as social security charges; and (ii) other wage components, such as child care and parent care costs, on the basis of the employment contract or the service agreement in respect of the employment or service concerned;
- (45) ‘fair rate of return (FRR)’ means the expected internal rate of return equivalent to a risk-adjusted discount rate which reflects the level of risk of the investment and the nature and volume of the capital to be invested by the private investors;
- (46) ‘total financing’ means the overall investment amount made into an eligible undertaking or project under Section 3 or under Article 17 or Article 56 of this Regulation to the exclusion of entirely private investments provided on market terms and outside the scope of the relevant State aid measure;
- (47) ‘competitive bidding process’ means a bidding process which complies with all of the following conditions:
- (a) the bidding process is open, clear, transparent, non-discriminatory and based on objective criteria defined *ex ante* and published sufficiently in advance to enable effective competition;
  - (b) the budget or volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid; in case of undersubscription during the implementation of a scheme, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;
  - (c) the aid amount is determined based on the initial bid or a clearing price; and
  - (d) *ex post* adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) are excluded;
- (48) ‘simplified funding gap’ means the expected net costs calculated as the net present value (‘NPV’) of the project taking into account all expected future positive and negative cash-flows generated by the project over its lifetime and a terminal value, discounted using an appropriate discount rate. The cash flows should be estimated *ex ante* on the basis of reasonable projections;
- (49) ‘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 undertakings and contain no element of collusion. Any transaction that results from a

competitive, transparent, non-discriminatory and unconditional procedure is considered as meeting the arm's length principle;

- (50) 'written' means any form of written document, including electronic documents, if such electronic documents are recognised as equivalent under the applicable administrative procedures and legislation in the Member State concerned;

### **Definitions of terms that first appear in Section 1 of Chapter III**

- (51) 'steel sector' means the production of one or more of the following:

- (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 cast 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;

- (52) 'lignite' means low-rank C or ortho-lignite and low-rank B or meta-lignite as defined by the international codification system for coal established by the United Nations Economic Commission for Europe;

- (53) ‘transport sector’ means the following activities in terms of the statistical classification of economic activities (NACE Rev. 2.1), established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>15</sup>:
- (a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.33 On-demand passenger transport service activities by vehicle with driver, 49.34 Passenger transport by cableways and ski lifts, 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;
- (54) ‘tourism activity’ means the following activities in terms of NACE Rev. 2.1:
- (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: Arts creation and performing arts activities;
  - (e) NACE 91: Libraries, archives, museums and other cultural activities;
  - (f) NACE 93: Sports activities and amusement and recreation activities.
- (55) ‘assisted areas’ means areas designated in a regional aid map that has been approved in application of Article 107(3), points (a) and (c) of the Treaty and is in force at the time of the award of the aid;
- (56) ‘initial investment’ means one of the following:
- (a) an investment in tangible and intangible assets related to one or more of the following:
    - the setting-up of a new establishment;
    - the extension of the capacity of an existing establishment;
    - the diversification of the output of an establishment into products or services not previously produced in the establishment; or
    - a fundamental change in the overall production process of the product(s) or the overall provision of the service(s) concerned by the investment in the establishment;

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<sup>15</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

- (b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased. The sole acquisition of the shares of an undertaking does not qualify as initial investment.

A replacement investment therefore does not constitute an initial investment;

- (57) ‘initial investment that creates a new economic activity’ means:

- (a) an investment in tangible and intangible assets related to one or both of the following:

— the setting up of a new establishment;

— the diversification of the activity of an establishment, if the new activity is not the same or a similar activity to the activity previously performed in the establishment;  
or

- (b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, if the new activity to be carried out using the acquired assets is not the same or a similar activity than the one carried out in the establishment before the acquisition.

Sole acquisition of the shares of an undertaking does not qualify as initial investment that creates a new economic activity;

- (58) ‘tangible assets’ means assets consisting of land, buildings and plant, machinery and equipment;

- (59) ‘intangible assets’ means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property;

- (60) ‘same or a similar activity’ means an activity in the same class (four-digit numerical code) of the NACE Rev. 2.1 statistical classification of economic activities (NACE Rev. 2.1);

- (61) ‘completion of the investment’ means the moment when the investment is considered by the national authorities as completed or, in the absence thereof, three years after the start of works;

- (62) ‘net increase in the number of employees’ means a net increase in the number of employees in the establishment concerned compared to the average over a given period in time, after deducting from the number of jobs created any job losses during that period. The number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions;

- (63) ‘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;

(64) ‘adjusted aid amount’ means the maximum permissible aid amount for a large investment project, calculated in accordance with the following formula:

$$\text{adjusted aid amount} = R \times (A + 0.50 \times B + 0 \times C)$$

where: R is the maximum aid intensity applicable in the area concerned, excluding the increased aid intensity for SMEs; A is the part of eligible costs equal to EUR 55 million; B is the part of eligible costs between EUR 55 million and EUR 110 million, and C is the part of eligible costs above EUR 110 million;

(65) ‘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;

(66) ‘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;

(67) ‘point of destination’ means the place where the goods are unloaded;

(68) ‘point of origin’ means the place where the goods are loaded for transport;

(69) ‘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;

(70) ‘urban development fund manager’ means a professional management undertaking with legal personality, selecting and making investments in eligible urban development projects;

(71) ‘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;

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

### **Definitions of terms that first appear in Section 3 of Chapter III**

- (74) ‘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;
- (75) ‘guarantee’ in the context of sections 1, 2, 6 and Article 82(8)(e)(ii) of this 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;
- (76) ‘guarantee rate’ means the percentage of loss coverage by a public investor of each and every transaction eligible under the relevant aid measure;
- (77) ‘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;
- (78) ‘financial endowment’ means a repayable public investment made to a financial intermediary, and where all the proceeds shall be returned to the public investor;
- (79) ‘risk finance investment’ means equity and quasi-equity investments, loans (including leases) and guarantees, or a combination thereof, to eligible undertakings for the purposes of making new investments, to the exclusion of entirely private investments provided on market terms and outside the scope of the relevant aid measure;
- (80) ‘independent private investor’ means an investor who meets the definitions in points (81) and (82);

- (81) ‘private’ investors mean investors who, irrespective of their ownership structure, pursue a purely commercial interest, use their own resources and bear the full risk in respect of their investment, including: credit institutions investing at own risk and from own resources, private endowments and foundations, family offices and business angels, corporate investors, insurance undertakings, pension funds, academic institutions, as well as natural persons who either conduct an economic activity or not, but excluding the European Investment Bank, the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a legal entity that carries out financial activities on a professional basis which has been given a mandate by a Member State or a Member State’s entity at central, regional or local level to carry out development or promotional activities (national promotional bank or another promotional institution);
- (82) ‘independent’ investor means an investor that is not a shareholder of the eligible undertaking in which it invests. In the context of follow-on investments, an investor remains ‘independent’ if it was considered as an independent investor in a previous investment round. Upon the creation of a new company, any private investors, including the founders, of such new company, are considered to be independent from that company;
- (83) ‘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;
- (84) ‘first commercial sale’ means the first sale by a company on a product or service market, excluding limited sales to test the market;
- (85) ‘unlisted SME’ means an SME which is not listed on the official list of a stock exchange, except for alternative trading platforms;
- (86) ‘follow-on investment’ means additional risk finance investment in a company subsequent to one or more previous risk finance investment rounds, or follow-on investments supported by the InvestEU Fund;
- (87) ‘replacement capital’ means the purchase of existing shares in a company from an earlier investor or shareholder;
- (88) ‘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 legal entity that carries out financial activities on a professional basis which has been given mandate by a Member State or a Member State’s entity at central, regional or local level to carry out development or promotional activities (a promotional bank or another promotional institution). The entrusted entity can be selected or directly appointed in accordance with the provisions of

Directive 2014/24/EU of the European Parliament and of the Council<sup>16</sup> or in accordance with Article 38(4), point (b)(iii), of Regulation (EU) No 1303/2013 of the European Parliament and of the Council<sup>17</sup> or Article 59(3) of Regulation (EU) 2021/1060 of the European Parliament and of the Council<sup>18</sup>, whichever is applicable;

- (89) ‘innovative enterprise’ means [definition to be determined];
- (90) ‘alternative trading platform’ means an “SME growth market” as defined in Article 4(1), point (12) of Directive 2014/65/EU of the European Parliament and of the Council<sup>19</sup>;
- (91) ‘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;
- (92) ‘social enterprise’ means an undertaking, regardless of its legal form which in accordance with its articles of association, statutes or with any other legal document that may result in liability under the rules of the Member State where a social enterprise is located, has the achievement of measurable, positive social impacts, as its primary objective, uses at least half of its profits to achieve its primary social objective, and has predefined procedures and rules that ensure that the distribution of profits does not undermine the primary social objective;

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<sup>16</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>17</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council 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).

<sup>18</sup> Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

<sup>19</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

### Definitions of terms that first appear in Section 4 of Chapter III

- (93) ‘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;
- (94) ‘industrial research’ means the planned research or critical investigation that aim at the acquisition of new knowledge and skills for developing new products, processes or services or at bringing about a significant improvement in existing products, processes or services, including digital products, processes or services, in any area, technology, industry or sector (including, but not limited to, digital industries and technologies, such as super-computing, quantum technologies, block chain technologies, artificial intelligence, cyber security, big data and cloud technologies) and that comprises the creation of components parts of complex systems, and can 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;
- (95) ‘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, including digital products, processes or services, in any area, technology, industry or sector (including, but not limited to, digital industries and technologies, such as for example super-computing, quantum technologies, block chain technologies, artificial intelligence, cyber security, big data and cloud or edge technologies). This may also encompass, 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, including 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;

- (96) ‘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;

- (97) ‘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 therefore relieve other parties of its financial risks. Contract research and provision of research services are not considered forms of collaboration;
- (98) ‘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 and 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, costs and 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;
- (99) ‘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, point (a), of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC)<sup>20</sup>;
- (100) ‘testing and experimentation infrastructure’ means facilities, equipment, capabilities and resources, such as test beds, pilot lines, demonstrators, testing facilities or living labs, and related support services that are used predominantly by undertakings, especially SMEs, which seek support for testing and experimentation, in order to develop new or improved products, processes and services, and to test and upscale technologies, including digital technologies, to advance through industrial research and experimental development. Access to publicly funded testing and

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<sup>20</sup> OJ L 206, 8.8.2009, p. 1.

experimentation infrastructures is open to several users and must be granted on a transparent and non-discriminatory basis and on market terms;

- (101) ‘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, research infrastructures, testing and experimentation infrastructures, digital innovation hubs, non-for-profit organisations, regulatory sandboxes and other related economic actors) designed to stimulate innovative activity and new ways of collaboration, such as by digital means, by sharing and/or promoting the 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. Digital innovation hubs, including European Digital Innovation Hubs funded under the centrally managed Digital Europe Programme established by Regulation (EU) 2021/694 of the European Parliament and of the Council<sup>21</sup>, are entities whose aim is to stimulate the broad uptake of digital technologies, such as artificial intelligence, cloud, edge and high-performance computing and cybersecurity, by industry (in particular by SMEs) and public sector organisations. Digital innovation hubs may qualify as an innovation cluster by themselves for the purposes of this Regulation;
- (102) ‘innovation advisory services’ means consultancy, assistance or training in the fields of knowledge transfer, acquisition, protection or exploitation of intangible assets or the use of standards and regulations embedding them, as well as consultancy, assistance or training on the introduction or use of innovative technologies and solutions (including digital technologies and solutions);
- (103) ‘innovation support services’ means the provision of office space, data banks, cloud and data storage services, libraries, market research, laboratories, quality labelling, testing, experimentation and certification (including in a sandbox) or other related services, including those services provided by research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters, or in cooperation with them, for the purpose of developing more effective or technologically advanced products, processes or services, including the implementation of innovative technologies and solutions (including digital technologies and solutions);
- (104) ‘digitalisation’ means the adoption of innovative technologies carried out by electronic devices and/or systems which make it possible to increase product functionality, develop online services, modernise processes, or migrate to business models based on the disintermediation of goods production and service delivery, eventually producing a transformative impact;

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<sup>21</sup> Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11.5.2021, p. 1).

- (105) ‘organisational innovation’ means the implementation of a new organisational method at the level of the undertaking (at group level in the given industry sector in the EEA), workplace organisation or external relations, including for instance by making use of novel or innovative digital technologies. Excluded from this definition are 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;
- (106) ‘process innovation’ means the implementation of a new or significantly improved production or delivery method, including significant changes in techniques, equipment or software, at the level of the undertaking (at group level in the given industry sector in the EEA), including for instance by making use of novel or innovative digital technologies or solutions. Excluded from this definition are 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;

### **Definitions of terms that first appear in Section 5 of Chapter III**

- (107) ‘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 referred to in point (11)(b) to (k) under the definition of ‘disadvantaged worker’;
- (108) ‘sheltered employment’ means employment in an undertaking where the work arrangements are designed specifically for workers with disabilities, in an environment that engages predominantly with workers with disabilities and that has as its primary objective to offer employment, protection and support to such workers, which are typically not available to them in the open labour market;

### **Definitions of terms that first appear in Section 6 of Chapter III**

- (109) ‘operating profit’ means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive;
- (110) ‘Union standard’ means any of the following:

- (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings, excluding standards or targets set at Union level which are binding for Member States but not for individual undertakings; or
- (b) the obligation to use the best available techniques (BAT), as defined in Directive 2010/75/EU of the European Parliament and of the Council<sup>22</sup>, and to ensure that emission levels do not exceed those that would be achieved when applying BAT; where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU or under other applicable directives, those levels will be applicable for the purposes of this Regulation; where those levels are expressed as a range, the limit for which the BAT is first achieved for the undertaking concerned will be applicable;
- (111) ‘renewable fuels’ means renewable fuels as defined in Article 2, point (22a), of Directive (EU) 2018/2001 of the European Parliament and of the Council<sup>23</sup> and its implementing or delegated acts;
- (112) ‘renewable electricity’ means electricity generated from renewable sources, within the meaning of Article 2, point (1), of Directive (EU) 2018/2001;
- (113) ‘vehicle’ means any of the following:
  - (a) a road vehicle of category M1, M2, M3, N1, N2, N3 or L;
  - (b) an inland vessel or a sea and coastal vessel for passenger or freight transport;
  - (c) rolling stock;
  - (d) aircraft;
- (114) ‘energy efficiency’ means energy efficiency as defined in Article 2, point (8), of Directive (EU) 2023/1791 of the European Parliament and of the Council<sup>24</sup>;
- (115) ‘primary energy’ means energy from renewable and non-renewable sources which has not undergone any conversion or transformation process;
- (116) ‘smart-readiness’ means the capability of buildings or building units to adapt their operation to the needs of the occupant, including optimising energy efficiency and overall performance, and to adapt their operation in response to signals from the grid;

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<sup>22</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

<sup>23</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

<sup>24</sup> Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (OJ L 231, 20.9.2023, p. 1)

- (117) ‘small mid-cap’ means an undertaking meeting the criteria set out in Annex V. For the purpose of the application of Article 82(10) and Article 83, during the implementation of the InvestEU-programme under the Union’s 2021\_2027 multiannual financial framework<sup>25</sup>, ‘small mid-cap’ means an undertaking that is not an SME and employs up to 499 employees;
- (118) ‘energy savings’ means energy savings as defined in Article 2, point (9), of Directive (EU) 2023/1791;
- (119) ‘high-efficiency cogeneration’ means cogeneration which satisfies the definition of high efficiency cogeneration as set out in Article 2, point (40), of Directive (EU) 2023/1791;
- (120) ‘cogeneration’ means cogeneration as defined in Article 2, point (36), of Directive (EU) 2023/1791;
- (121) ‘high-efficiency cogeneration based on renewable energy sources’ means high-efficiency cogeneration using 100 % energy from renewable sources as an input for the production of heat and power;
- (122) ‘heat pump’ means a machine, a device or installation that transfers heat from natural surroundings such as air, water or ground to buildings or industrial applications by reversing the natural flow of heat such that it flows from a lower to a higher temperature. For reversible heat pumps, it may also transfer heat from the building to the natural surroundings;
- (123) ‘energy from renewable sources’ or ‘renewable energy’ means energy produced by plants using only renewable energy sources as defined in Article 2, point (1), of Directive (EU) 2018/2001, 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 and includes renewable electricity used for filling storage systems connected behind-the-meter (jointly installed or as an add-on to the renewable installation), but excludes electricity produced as a result of storage systems;
- (124) ‘innovative technology’ means a new and recently qualified 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;
- (125) ‘biomass’ means biomass as defined in Article 2, point (24), of Directive (EU) 2018/2001;

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<sup>25</sup> Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, OJ L I 433, 22.12.2020, p. 11.

- (126) ‘biofuels’ means biofuels as defined in Article 2, point (33), of Directive (EU) 2018/2001;
- (127) ‘biogas’ means biogas as defined in Article 2, point (28), of Directive (EU) 2018/2001;
- (128) ‘bioliquids’ means bioliquids as defined in Article 2, point (32), of Directive (EU) 2018/2001;
- (129) ‘biomass fuels’ means biomass fuels as defined in Article 2, point (27), of Directive (EU) 2018/2001;
- (130) ‘renewable fuels of non-biological origin’ or ‘RFNBOs’ means renewable fuels of non-biological origin as defined in Article 2, point (36), of Directive (EU) 2018/2001 and its implementing or delegated acts;
- (131) ‘funding gap’ means the difference between the net present value (‘NPV’) of the project (the factual scenario) taking into account all expected future positive and negative cash-flows generated by the project over its lifetime and a terminal value, discounted using an appropriate discount rate, and the NPV of all expected cash-flows related to the counterfactual investment (the counterfactual scenario). The cash flows should be estimated *ex ante* on the basis of reasonable projections;
- (132) ‘remediation’ means environmental management actions, such as the removal or detoxification of contaminants or excess nutrients from soil and water, that aim to reduce, isolate or remove sources of degradation;
- (133) ‘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;
- (134) ‘pollution’ means pollution as defined in Article 3, point (2), of Directive 2010/75/EU;
- (135) ‘pollutant’ means a pollutant as defined in Article 2, point (10), of Regulation (EU) 2020/852;
- (136) ‘restoration’ means restoration as defined in Article 3, point (3) of Regulation (EU) 2024/1991;
- (137) the ‘good condition’ of an ecosystem has the meaning set out in Article 2, point (16) of Regulation (EU) 2020/852 of the European Parliament and of the Council;
- (138) ‘polluter’ means someone who directly or indirectly damages the environment or who creates conditions leading to such damage;
- (139) ‘resource efficiency’ means reducing the quantity of inputs needed to produce a unit of output or substituting primary inputs with secondary inputs;

- (140) ‘waste heat’ means waste heat as defined in Article 2, point (9), of Directive (EU) 2018/2001;
- (141) ‘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) electricity:
- (i) transmission and distribution systems, where ‘transmission’ means the transport of electricity onshore as well as offshore on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply and ‘distribution’ means the transport of electricity onshore as well as offshore on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;
  - (ii) any equipment or installation essential for the systems referred to in point (i) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;
  - (iii) fully integrated network components, as defined in Article 2, point (51), of Directive (EU) 2019/944 of the European Parliament and of the Council<sup>26</sup>;
  - (iv) smart electricity grids, which means systems and components integrating information and communications technology, through operational digital platforms, control systems and sensor technologies both at transmission and distribution level, aiming at a more secure, efficient and intelligent electricity transmission and distribution network, increased capacity to integrate new forms of generation, storage and consumption and facilitating new business models and market structures;
  - (v) off-shore electricity grids, which means any equipment or installation of electricity transmission or distribution infrastructure as defined in point (i), which has dual functionality: interconnection and transmission or distribution of offshore renewable electricity from the offshore generation sites to two or more countries. This also includes smart grids as well as any offshore adjacent equipment or installation essential to operate safely, securely and efficiently, including protection, monitoring and control systems, and necessary substations if they also ensure technology interoperability and among other interface compatibility between different technologies;

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<sup>26</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

- (b) gas (natural gas, biogas including biomethane or renewable gas of non-biological origin):
- (i) transmission and distribution pipelines for the transport of 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 referred to in point (i);
  - (iii) reception, storage and regasification or decompression facilities for liquefied or compressed gas;
  - (iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;
  - (v) smart gas grids, which means any of the following equipment or installation aiming at enabling and facilitating the integration of renewable and low-carbon gases (including hydrogen or gases of non-biological origin) into the network: digital systems and components integrating information and communication technologies, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission, distribution and consumption within a gas network. Furthermore, smart grids may also include equipment to enable reverse flows from the distribution to the transmission level and related necessary upgrades to the existing network;
- (c) hydrogen:
- (i) transmission pipelines, for the high-pressure transport of hydrogen, as well as distribution pipelines for the local distribution of hydrogen, giving access to multiple network users on a transparent and non-discriminatory basis;
  - (ii) storage facilities, which means facilities used for the stocking of hydrogen of a high grade of purity, including the part of a hydrogen terminal used for storage but excluding the portion used for production operations, and including facilities reserved exclusively for hydrogen network operators, as defined in Article 2, point (25), of Directive (EU) 2024/1788<sup>27</sup>, in carrying out their functions. Hydrogen storage facilities include underground storage facilities connected to the high-pressure hydrogen pipelines referred to in point (i);

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<sup>27</sup> Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (recast) (OJ L, 2024/1788, 15.7.2024, ELI: <http://data.europa.eu/eli/dir/2024/1788/oj>).

(iii) dispatch, reception, storage and regasification or decompression facilities for hydrogen or hydrogen embedded in other chemical substances with the objective of injecting the hydrogen into the grid either for gas or dedicated to hydrogen;

(iv) terminals, which means installations used for the transformation of liquid hydrogen into gaseous hydrogen for injection into the hydrogen network. Terminals include ancillary equipment and temporary storage necessary for the transformation process and subsequent injection into the hydrogen network, but does not include any part of the hydrogen terminal used for storage;

(v) interconnectors, which means a hydrogen network (or part thereof) which crosses or spans a border between Member States, or between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State;

(vi) any equipment or installation essential for the hydrogen system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations and dedicated mobile assets for the transport and storage of hydrogen, if such mobile assets are only used to transport renewable hydrogen;

Any of the assets listed under points (i) to (vi) may be newly constructed assets or assets converted from natural gas to hydrogen, or a combination of the two.

(d) carbon dioxide:

(i) pipelines, other than upstream pipeline network, used to transport carbon dioxide from more than one source, namely industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC of the European Parliament and of the Council<sup>28</sup> or for the purpose of use of carbon dioxide as feedstock or to enhance the yields of biological processes;

(ii) facilities for liquefaction and buffer storage of carbon dioxide in view of its transport or storage. This does not include infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC and associated surface and injection facilities;

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<sup>28</sup> 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 (OJ L 140, 5.6.2009, p. 114).

(iii) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems. This may include dedicated mobile assets for the transport and storage of carbon dioxide, if such mobile assets fulfil the definition of a clean vehicle;

- (e) infrastructure used for transmission or distribution of thermal energy in the form of steam, hot water or chilled liquids from multiple producers or users, based on use of renewable energy or waste heat from industrial applications;
- (f) Projects of Common Interest, as defined in Article 2, point (4), of Regulation (EU) No 347/2013 of the European Parliament and of the Council<sup>29</sup> and project of mutual interest referred to in Article 171 of the Treaty;
- (g) other infrastructure categories that enable physical or wireless connection of renewable or carbon-free energy between producers and users from multiple access and exit points and which are open to access by third parties not belonging to the infrastructure owner or manager undertakings;

Assets listed under points (a) to (g) which constitute dedicated infrastructure shall not qualify as energy infrastructure.

- (142) ‘electricity storage’ means deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy;
- (143) ‘thermal storage’ means deferring the final use of thermal energy to a moment later than when it was generated, or the conversion of electrical or thermal energy into a form of energy which can be stored, the storing of such energy, and, where appropriate, the subsequent conversion or reconversion of such energy into thermal energy for final use (i.e., heating or cooling);
- (144) ‘reasonable profit’ means profit determined to be reasonable with respect to the typical profit for the sector concerned;

### **Definitions of terms that first appear in Section 9 of Chapter III**

- (145) ‘backhaul network’ means the part of a broadband network that connects the access network to the backbone network and which does not provide direct access to end-users. It is the part of the network where the traffic of end users is aggregated;
- (146) ‘backbone network’ means the core network that interconnects backhaul networks from different areas or regions;

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<sup>29</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (OJ L 115, 25.4.2013, p. 39).

- (147) ‘access network’ means the segment of a broadband network that connects the backhaul network with the end users’ premises or devices;
- (148) ‘peak-time’ means the time of the day with a typical duration of one hour where the network load is usually at its maximum;
- (149) ‘peak-time conditions’ means the conditions under which the network is expected to operate at ‘peak-time’;
- (150) ‘relevant time horizon’ means a time horizon used for verifying planned private investments and corresponds to the time frame that the Member State estimates for deploying the planned State funded network, starting from the moment of publication of the public consultation on the planned State intervention until the entry into operation of the network (i.e. start of the provision of wholesale and/or retail services on the State funded network). The relevant time horizon cannot be shorter than two years;
- (151) ‘airport infrastructure’ means infrastructure and equipment for the provision of airport services including runways, terminals, aprons, taxiways, security airport infrastructure, cybersecurity airport infrastructure, centralised groundhandling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities;
- (152) ‘airport’ means an entity or group of entities performing the economic activity of providing airport services;
- (153) ‘centralised groundhandling infrastructure’ means infrastructure which is normally managed by the airport and put at the disposal of the various providers of groundhandling services active at the airport in exchange for remuneration, excluding equipment managed by the providers of groundhandling services;
- (154) ‘cybersecurity airport infrastructure’ means infrastructure and equipment that enhances resilience of airports to cyberattacks such as hardened operational networks, detection and response systems and secure communication platforms;
- (155) ‘non-aeronautical activities’ means commercial services provided to air carriers or other users of the airport, including ancillary services to passengers, freight forwarders or other service providers, renting out of offices and shops, car parking and hotels;
- (156) ‘security airport infrastructure’ means physical security infrastructure in airports such as fences, security systems, customs control facilities and equipment needed for passenger entry and exit points in terminals, such as x-ray scanners, walk-through and handheld metal detectors and access control systems;

- (157) ‘port’ means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators in the port;
- (158) ‘port infrastructure’ means infrastructure and facilities for the provision of transport related port services. For example, berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, infrastructure for the collection of ship-generated waste and cargo residues, recharging and refuelling infrastructure in ports supplying vehicles, mobile terminal equipment and mobile groundhandling equipment with electricity, hydrogen, ammonia and methanol for transport related activities, on-site production installations of renewable electricity or renewable hydrogen for transport related activities and storage units for storing hydrogen or renewable electricity for transport related activities;
- (159) ‘port superstructure’ means surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services;
- (160) ‘access infrastructure’ means any type of infrastructure necessary to ensure access and entry from land or sea and river by users to a port, or in a port, such as roads, rail tracks, channels and locks;
- (161) ‘vessels’ means floating structures, whether self-propelled or not, with one or more surface displacement hulls;
- (162) ‘inland waterway vessels’ means vessels intended solely or mainly for navigation on inland waterways or in waters within, or closely adjacent to, sheltered waters;
- (163) ‘infrastructure for the collection of ship-generated waste and cargo residues’ means fixed, floating or mobile port facilities capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council<sup>30</sup>;

### **Definitions of terms that first appear in Section 10 of Chapter III**

- (164) ‘financial product’, ‘national promotional banks or institutions’ and ‘implementing partner’ have the meaning set out in Article 2 of Regulation (EU) 2021/523;
- (165) ‘commercial financial intermediary’ means a financial intermediary which operates on a for profit basis and at full own risk, without a public guarantee, national

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<sup>30</sup> Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p. 81).

promotional banks or institutions are not considered to be commercial financial intermediaries;

- (166) ‘socioeconomic drivers’ means entities which by their mission, nature or location can directly or indirectly generate important socioeconomic benefits to citizens, business and local communities located in their surrounding territory or in their area of influence, including among others public authorities, public or private entities entrusted with the operation of services of general interest or of services of general economic interest as set out in Article 106(2) of the Treaty and digitally intensive enterprises.

### *Article 3*

#### *Conditions for exemption*

1. 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 exempted from the notification requirement of Article 108(3) of the Treaty if such aid meets all the conditions set out in Chapter I of this Regulation, as well as the specific conditions for the relevant category of aid set out in Chapter III of this Regulation.
2. Unless otherwise provided for in this Regulation:
  - (a) the relevant time for assessing whether the block exemption conditions laid down set out in this Regulation are met is the date of granting of the aid. As regards aid to infrastructure, the conditions that shall be met after the date of granting, such as conditions related to the use of the infrastructure, shall be met for a time period of 10 years as from the date of the last payment of aid;
  - (b) the relevant entity for assessing whether the block exemption conditions set out in this Regulation are met is the undertaking;
  - (c) any concession or other entrustment to a third party to construct, upgrade, operate or rent aided infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
3. Whether or not the monetary thresholds set out in this Regulation are exceeded shall be assessed on the basis of amounts discounted to their value on the date on which aid is granted. The interest rate to be used to discount cash flows shall be the discount rate applicable on that same date.

### *Article 4*

#### *General provisions applicable to aid provided in the form of financial instruments*

1. Aid provided by a Member State to final beneficiaries in the form of financial instruments via one or more intermediaries, either directly or through an entrusted

entity to which they assign the implementation of the aid measure, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty if the conditions set out in this Article and Chapter I are met.

2. The aid measure falls within the scope of an article in Chapter III of this Regulation and complies with all the specific conditions in that article.
3. Aid within the scope of Section 3 (Aid for access to finance for SMEs) and Section 10 (Aid involved in financial products supported by the InvestEU Fund) shall not be exempted under this Article from the notification requirement in Article 108(3) of the Treaty.
4. A Member State or entrusted entity shall provide aid in the form of a public contribution to the intermediaries.
5. As part of the financial instrument, a Member State or entrusted entity may provide aid to the intermediaries in the form of a financial contribution to fund grant components, either stand-alone or embedded in a loan, in favour of final beneficiaries.
6. The intermediaries shall be able to demonstrate that they operate a mechanism ensuring that the aid is passed on to the final beneficiaries to the largest extent possible. Aid provided by a Member State or entrusted entity to the intermediaries which takes the form of a financial contribution to fund grant components in favour of final beneficiaries shall be passed on entirely by the intermediaries to the final beneficiaries.
7. The following requirements shall apply to the intermediaries (including an entrusted entity also acting as intermediary):
  - (a) They shall be selected through an open, transparent and non-discriminatory call, in accordance with applicable Union and national laws, and all interested intermediaries shall have an opportunity to participate. There shall be no discrimination on the basis of their place of establishment or incorporation in any Member State.
  - (b) They shall be managed on a commercial basis and shall ensure profit-driven financing decisions.
  - (c) They shall be obliged by law or contract to act with the diligence of a professional manager in good faith and to avoid conflicts of interest.
  - (d) They shall be subject to regulatory supervision.
  - (e) They shall be able to demonstrate that they have relevant expertise in evaluating and selecting the types of aid beneficiaries and projects eligible under the applicable article in Chapter III of this Regulation referred to in paragraph 2 above.

8. The following limitations shall apply:
  - (a) If the financial instrument involves the use of a guarantee, the guarantee coverage rate shall not exceed 80%, losses shall be sustained proportionally and under the same conditions by the lender(s) and the guarantor, and the guaranteed amount shall decrease proportionally in such a way that the guarantee never covers more than 80 % of the underlying loan's outstanding principal.
  - (b) If the financial instrument involves asymmetric loss-sharing between public and private investors, the first loss assumed by the Member State or entrusted entity shall not exceed 25 % of the total investment.
  - (c) If the financial instrument involves grant components, the grant components provided to a final beneficiary shall not exceed the sum of the nominal values of any non-grant components of the financial instrument provided to that final beneficiary.
9. The nominal value of the equity, the nominal value of the loan (irrespective of whether it embeds a grant component) or the nominal value of the loan underlying the guarantee given by intermediaries to a final beneficiary, increased by the nominal value of the stand-alone grant component (if any) to that final beneficiary, shall not exceed the notification threshold in the applicable article in Chapter III of this Regulation referred to in paragraph 2 above.

#### *Article 5*

##### *Notification thresholds*

1. This Regulation shall not apply to aid which exceeds the thresholds set out in Chapter III.
2. The notification thresholds set out in Chapter III shall not be circumvented by artificially splitting up the aid schemes or aided projects.

#### *Article 6*

##### *Determination of the aid amount*

1. Ensuring that the applicable aid thresholds set out in this Regulation are met shall not involve a complex economic assessment. This is the case when nominal amounts of aid are used and for 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.
2. Determining the aid amount shall be regarded as not involving a complex economic assessment in particular in the following cases:
  - (a) nominal amounts of grants, equity, quasi-equity, loans, guarantees (guaranteed amount) and repayable advances;

- (b) aid comprised in grants and interest rate subsidies;
- (c) 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;
- (d) aid comprised in guarantees:
  - (i) where the gross grant equivalent has been calculated on the basis of safe-harbour premiums set out 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<sup>31</sup>, 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;
- (e) aid in the form of repayable advances 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;
- (f) aid in the form of the sale or the lease of tangible assets below market rates where the value is established either by an independent expert evaluation prior to the transaction or by reference to a publicly available, regularly updated and generally accepted benchmark;
- (g) aid in the form of tax advantages, where the measure provides for a cap ensuring that the applicable threshold is not exceeded;
- (h) aid to undertakings for their participation in European territorial cooperation projects under Article 18(2), where it provides for a cap ensuring that the applicable threshold set out in Article 18(2) is not exceeded;
- (i) aid for SMEs and small mid-caps in the form of full or partial market price discounts if the conditions set out in Article 40 are met;
- (j) aid for the production of renewable energy, if the conditions set out in Article 59 or Article 60 are met;
- (k) aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat, if the conditions set out in Article 23 are met.

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<sup>31</sup> OJ C 155, 20.6.2008, p. 10.

## *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. Value added tax charged on eligible costs or expenses that is refundable under the applicable national tax law shall, however, not be taken into account for calculating aid intensity and eligible costs. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary.
2. The amount of eligible costs may be determined in accordance with a simplified cost option if the following conditions are fulfilled:
  - (a) The simplified cost option is established *ex ante* in accordance with a fair, equitable and verifiable method based on relevant and reliable data. Such data may include statistical and historical data, market surveys, expert opinions and draft budgets.
  - (b) The method is or has been used for an operation that is at least partly financed through a Union fund that allows the use of simplified cost options or, alternatively, has been verified *ex ante* by an appropriate authority.

In addition, for aid under Article 33 and Article 34, the eligible costs can be calculated in accordance with the rules set out in those articles.

3. Eligible investment costs include one-off non-amortizable costs linked directly to the investment and its initial installation such as permitting costs and feasibility studies.
4. Where aid is granted in the form of nominal amounts of repayable advances 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 set out in Chapter III may be increased by 10 percentage points.

## *Article 8*

### *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 State aid or EU funding before work on the project starts or before the activity starts. The application for the aid shall contain the following information:
  - (a) the undertaking's name and size (SME or large enterprise);

- (b) a description of the project or activity, including categories of costs, its start and end dates;
  - (c) location of the project or activity;
  - (d) the overall costs;
  - (e) the type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and amount of public funding needed for the project or activity.
3. Ad hoc aid granted to large enterprises shall be considered to have an incentive effect if, in addition to ensuring that the condition set out in paragraph 2 is met, 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) a material increase in the scope of the project/activity due to the aid. In the case of regional investment aid, this condition is met if 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; or
  - (b) a material increase in the total amount spent by the beneficiary on the project/activity due to the aid, or
  - (c) 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 met:
- (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 shall be deemed to have an incentive effect:
- (a) regional operating aid and regional urban development aid, where the relevant conditions set out in Article 16 and Article 17 are met;
  - (b) aid for European territorial cooperation projects, if the relevant conditions set out in Article 18 are met;
  - (c) aid for CLLD projects, if the relevant conditions set out in Article 19 are met;

- (d) aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat, subject to the conditions set out in Article 23;
- (e) aid for access to finance for SMEs, if the relevant conditions set out in Article 25, Article 26, Article 27, Article 28 and Article 29 are met;
- (f) aid for research and development projects awarded a Seal of Excellence quality label, Marie Skłodowska-Curie actions and ERC Proof of Concept actions awarded a Seal of Excellence quality label, aid involved in co-funded projects and in co-funded Teaming actions, if the relevant conditions set out in Article 33, Article 34, Article 35 or Article 36 are met;
- (g) aid for the recruitment of disadvantaged workers in the form of wage subsidies and aid for compensating the costs of assistance provided to disadvantaged workers, if the relevant conditions set out in Article 45 and Article 46 respectively are met;
- (h) aid for the employment of workers with disabilities in the form of wage subsidies and aid compensating for the additional costs of employing workers with disabilities, where the relevant conditions set out in Article 47 and Article 48 are met;
- (i) social aid for transport for residents of remote regions, if the conditions set out in Article 49 are met;
- (j) aid for the promotion of energy from renewable energy sources under Article 58, Article 59 and Article 60 when the aid is granted automatically in accordance with objective and non-discriminatory criteria and without further exercise of discretion by the Member State and the measure has been adopted and is in force before work on the aided project or activity has started;
- (k) aid in the form of reductions in environmental taxes under Directive 2003/96/EC, if the conditions set out in Article 61 of this Regulation are met;
- (l) aid for the remediation of environmental damage where the remediation costs exceed the increase in value of the land or property and the conditions set out in Article 63 are met;
- (m) aid for the protection of nature and the implementation of nature-based solutions for climate change adaptation and mitigation where the conditions set out in Article 63 are met;
- (n) aid to make good the damage caused by certain natural disasters, if the conditions set out in Article 68 are met;
- (o) aid for culture and heritage conservation, if the conditions set out in Article 69 are met;
- (p) aid involved in financial products supported by the InvestEU Fund, if the conditions set out in Section 10 of Chapter III are met.

## Article 9

### Cumulation

1. In determining whether the notification thresholds in Article 4 and the maximum aid intensities in Chapter III are met, 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 State aid shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are met, if the total amount of public funding () granted in relation to the same eligible costs does not exceed the most favourable funding rate set out in the applicable rules of Union law. By way of derogation, the total public funding for projects supported by the European Defence Fund may reach up to the total eligible costs of the project, irrespective of the maximum funding rate applicable under this fund, if the notification thresholds and maximum aid intensities or maximum aid amounts under this Regulation are met.
3. Aid with identifiable eligible costs exempted by this Regulation may be cumulated with:
  - (a) any other State aid, as long as that State aid concerns different identifiable eligible costs, or any other State aid without 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 or under a Commission decision, whichever is the highest. By way of derogation, aid in favour of workers with disabilities, as provided for in Article 47 and Article 48, 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, if 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.

Financing provided to the final beneficiaries with support from the InvestEU Fund covered by Section 10 of Chapter III and the cost covered by this financing shall not be considered for determining compliance with the cumulation provisions set out in the first sentence of this point. Instead, the amount relevant for determining compliance with those provisions shall be calculated as follows. First, the nominal amount of the financing supported by the InvestEU Fund shall be deducted from the total eligible project costs, obtaining the total remaining eligible costs; second, the maximum aid shall be calculated by applying the relevant highest aid intensity or aid amount only to the total remaining eligible costs.

Where the notification threshold is expressed as a maximum aid amount, the nominal amount of financing provided to the final beneficiaries with the support from the InvestEU Fund shall also not be considered for determining whether the notification thresholds are met.

Alternatively, for senior loans or guarantees on senior loans supported by the InvestEU Fund under Section 10 of Chapter III, the gross grant equivalent of the aid entailed in such loans or guarantees provided to the final beneficiaries may be calculated, to the extent it does not involve any risk assessment. This gross grant equivalent of the aid can be used for ensuring, in line with the first sentence of this point, that cumulation with any other aid for the same identifiable eligible costs does not result in exceeding the highest aid intensity or aid amount applicable to the aid under this Regulation or the relevant notification threshold under this Regulation.

4. Aid without identifiable eligible costs exempted under Article 18, Article 19, Article 25, Article 26, Article 27, Article 28, Article 29, Article 30, Article 82(5), point (a)(ii), (iii) or (iv), Article 82(10) and Article 83 may be cumulated with any other State aid with identifiable eligible costs. Aid without identifiable eligible costs exempted under this Regulation 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. Aid without identifiable eligible costs exempted under this Regulation may be cumulated with other aid without identifiable eligible costs granted to remedy a serious disturbance in the economy of a Member State under Article 107(3), point (b), of the Treaty approved in a decision adopted by the Commission. Aid without identifiable eligible costs exempted under Article 82e(5), point (a)(ii), (iii) or (iv), Article 82(10) and Article 83 may be cumulated with other aid without identifiable eligible costs exempted under those Articles.
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 set out in Chapter III of this Regulation.
6. By way of derogation from paragraphs 1 to 5, in determining whether the ceilings for regional operating aid in outermost regions, as set out in Article 16(4), are met, only regional operating aid in outermost regions exempted from the notification requirement under this Regulation shall be taken into account.

## Article 10

### Publication and information

1. The Member State concerned shall ensure the publication, in the Commission's transparency award module<sup>32</sup> or 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 set out 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 100 000, or for aid involved in financial products supported by the InvestEU fund under Section 10 on each individual aid award exceeding EUR 500 000, or for beneficiaries active in primary agricultural production or in the fishery and aquaculture sector, other than those to which Article 18 applies, on each individual aid award exceeding EUR 10 000.

As regards aid granted to European territorial cooperation projects as referred to in Article 18(3), 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 (EU) No 1299/2013 of the European Parliament and of the Council<sup>33</sup>, or Article 45 of Regulation (EU) 2021/1059 of the European Parliament and of the Council<sup>34</sup>, whichever is applicable, is located. Alternatively, the Member States participating in the cooperation project may decide that each of them shall provide the information relating to the aid measures within their territory on their respective websites.

The publication obligations set out in the first subparagraph shall not apply to aid granted to European territorial cooperation projects referred to in Article 18(2), as well as CLLD projects under Article 19(2).

2. For schemes in the form of tax advantages, and for schemes covered by Article 17, Article 26 and Article 29, the requirement to publish information on each individual award exceeding EUR 100 000 may be waived with respect to SMEs which have not

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<sup>32</sup> State Aid Transparency Public Search, available at:  
<https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

<sup>33</sup> 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 (OJ L 347, 20.12.2013, p. 259).

<sup>34</sup> Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (OJ L 231, 30.6.2021, p. 94).

carried out any commercial sale in any market. For such aid schemes, the conditions set out in paragraph 1, first subparagraph, point (c), of this Article shall be considered to be met if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):

0.01-0.1 (only for fishery and aquaculture as well as primary agricultural production);

0.1-0.5;

0.5-1;

1-2;

2-5;

5-10;

10-20;

20-50 and

50 and more.

3. For social aid schemes for transport for residents of remote regions, the publication obligations set out in this Article shall not apply to final consumers.
4. If a financial product has been implemented by a Member State under the InvestEU Member State compartment or by a national promotional bank acting as an implementing partner or acting as a financial intermediary other than an implementing partner under InvestEU, the Member State shall remain under the obligation to ensure the publication of information as set out in paragraph 1, first subparagraph, point (c). However, this obligation is deemed to be met if the implementing partner provides to the Commission the information as set out in paragraph 1, first subparagraph, point (c), no later than 30 June of the year following the financial year in which the aid was granted and if the guarantee agreement signed between the Commission and the implementing partner contains a requirement to provide that information to the Commission.
5. The information referred to in paragraph 1, point (c), shall be organised and accessible in a standardised manner, as described in Annex III, and shall allow for effective search and download functions. It shall be published within six months from the date on which the aid was granted, or for aid in the form of tax advantages, within one year from the date on which the tax declaration is due, and shall be available for at least 10 years from the date on which the aid was granted. For aid in the form of tax advantages, if there is no formal requirement for an annual declaration, 31 December of the year for which the aid was granted will be considered as the date of granting for the purposes of this paragraph.

6. The Commission shall publish on its website:
  - (a) the links to the State aid websites referred to in paragraph 1;
  - (b) the summary information referred to in Article 11.

## **CHAPTER II**

### **REPORTING AND MONITORING**

#### *Article 11*

##### *Withdrawal of the benefit of the block exemption*

Where a Member State grants aid allegedly exempted from the notification requirement under this Regulation without meeting 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 meet 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 12*

##### *Reporting*

1. Member States, or in the case of aid granted to European territorial cooperation projects under Article 18(3), the Member State in which the managing authority 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 set out 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 the entry into force of the aid measure; and
  - (b) an annual report, as referred to in Commission Regulation (EC) No 794/2004<sup>35</sup> in electronic form, on the application of this Regulation, containing the information indicated in that Regulation, in respect of each whole year or each part of the year during which this Regulation applies. For financial products implemented by a

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<sup>35</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

Member State under the InvestEU Member State compartment or by a national promotional bank acting as an implementing partner or acting as a financial intermediary, other than an implementing partner, under InvestEU, this obligation of the Member State is deemed to be met if the implementing partner provides the annual reports to the Commission, in accordance with the relevant reporting requirements set out in the guarantee agreement signed between the Commission and the implementing partner.

2. The first paragraph shall not apply in respect of aid granted to European territorial cooperation projects referred to in Article 18(2) and in respect of aid granted to CLLD projects as referred to in Article 19(2).

### *Article 13*

#### *Monitoring*

1. Member States, or alternatively, in the case of aid granted to European territorial cooperation projects referred to in Article 18(3), 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 set out in this Regulation are met. 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 first subparagraph shall not apply in respect of aid granted to undertakings participating in European territorial cooperation projects referred to in Article 18(2), as well as to CLLD projects as referred to in Article 19(2).

2. In the case of schemes under which fiscal aid is granted automatically, such as those based on tax declarations of the beneficiaries, and where there is no ex ante verification that all compatibility conditions are met for each beneficiary, Member States shall regularly verify, at least ex post and on a sample basis, that all compatibility conditions are met, and draw the necessary conclusions. Member States shall maintain detailed records of the verifications for at least 10 years from the date of the controls.
3. The Commission may request, from each Member State, all the information and supporting documentation which the Commission considers necessary to monitor the application of this Regulation, including the information mentioned in paragraphs 1 and 2. The Member State concerned shall provide the Commission with the requested information and supporting documents within 20 working days from receipt of the request or such longer period as may be fixed in the request.

# CHAPTER III

## SPECIFIC PROVISIONS FOR DIFFERENT CATEGORIES OF AID

### SECTION 1

Regional development and territorial cooperation

#### *Article 14*

##### *Scope of regional aid*

Articles 15, 16 and 17 shall not apply to:

- (a) aid to the steel sector, the lignite sector and the coal sector;
- (b) aid to the transport sector as well as the related infrastructure; aid for energy generation, storage, transmission, distribution and infrastructure; and aid to the broadband sector. Those exclusions do not apply to regional investment aid in outermost regions and regional operating aid schemes;
- (c) regional operating aid in the form of schemes which are targeted at a limited number of specific sectors of economic activity i.e. schemes which cover activities falling within the scope of fewer than five classes (four-digit numerical code) of the NACE Rev. 2 statistical classification. Schemes aimed at tourism activities or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;
- (d) regional operating aid granted to undertakings whose principal activities fall under Section K 'Financial and insurance activities' of NACE Rev. 2.1 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. 2.1.

#### *Article 15*

##### *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 exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. The aid intensity shall not exceed the maximum aid intensity in the area concerned, as established in the regional aid map which is in force at the time the aid is awarded.

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 (64). Aid for large investment projects exceeding the adjusted aid amount shall be notified. This corresponds in particular to the following notification thresholds:

- (a) in cases of maximum regional aid intensity of 10 %: EUR 8.25 million;
  - (b) in cases of maximum regional aid intensity of 15 %: EUR 12.38 million;
  - (c) in cases of maximum regional aid intensity of 20 %: EUR 16.5 million;
  - (d) in cases of maximum regional aid intensity of 25 %: EUR 20.63 million;
  - (e) in cases of maximum regional aid intensity of 30 %: EUR 24.75 million;
  - (f) in cases of maximum regional aid intensity of 35 %: EUR 28.88 million;
  - (g) in cases of maximum regional aid intensity of 40 %: EUR 33 million;
  - (h) in cases of maximum regional aid intensity of 45 %: EUR 37.13 million;
  - (i) in cases of maximum regional aid intensity of 50 %: EUR 41.25 million;
  - (j) in cases of maximum regional aid intensity of 60 %: EUR 49.5 million;
  - (k) in cases of maximum regional aid intensity of 70 %: EUR 57.75 million;
  - (l) in cases of maximum regional aid intensity of 80 %: EUR 66 million.
3. The aid shall be granted in assisted areas. In assisted areas under Article 107(3), point (a), of the Treaty, the aid may be granted for any form of initial investment regardless of the size of the beneficiary. In assisted areas under Article 107(3), point (c), of the Treaty, the aid may be granted to SMEs for any form of initial investment and to large enterprises only for an initial investment that creates a new economic activity in the area concerned.
4. The investment shall be maintained in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. This shall not prevent the replacement of a plant or equipment that has become outdated or broken within this period, if the economic activity is retained in the area concerned for the minimum period.
5. The eligible costs shall be one of the following:
- (a) investment costs in tangible and intangible assets;
  - (b) the estimated wage costs of employment created as a result of an initial investment, calculated over two years;

- (c) a combination of part of the costs referred to in points (a) and (b) but not exceeding the amount of point (a) or (b), whichever is higher.
6. Costs related to the lease of tangible assets are eligible costs. For plant or machinery, the lease must take the form of financial leasing and the aid beneficiary shall commit to purchase the asset at the expiry of the term of the lease.

In the case of an initial investment as referred to in Article 2, point (56)(b) or point (57)(b), the acquisition of assets shall take place under market conditions. If the acquisition of the assets of an establishment is accompanied by an additional investment eligible for regional aid, the eligible costs of that additional investment shall be added to the cost of acquisition of the assets of the establishment. If aid has already been granted for the acquisition of assets before their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment.

7. Intangible assets shall be eligible for the calculation of investment costs if they meet the following conditions:
- (a) they are be used exclusively in the establishment receiving the aid;
  - (b) they are be amortisable;
  - (c) they are be purchased under market conditions;
  - (d) they are be included in the assets of the undertaking that receives the aid and remain associated with the project for which the aid is awarded for at least five years or three years for SMEs.
8. Where eligible costs are calculated by reference to the estimated wage costs as referred to in paragraph 5(b), the following conditions shall be met:
- (a) the investment project leads to a net increase in the number of employees in the establishment concerned compared to the average over the previous 12 months, after deducting from the number of jobs created any job losses that occurred during that period, expressed in annual labour units;
  - (b) each post is filled within three years of completion of the investment;
  - (c) each job created through the investment is maintained in the area concerned for a period of at least five years, or three years in the case of SMEs, from the date the post was first filled.
9. Any initial investment related to the same or a similar activity started by the same undertaking 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.

10. The aid beneficiary shall provide a contribution of at least 25 % of the eligible costs through its own resources or by external financing, in a form that is free of any public support. Funding provided by the European Investment Bank and/or the European Investment Fund (at own risk and from own resources) up to 12,5 % of the eligible costs shall be considered to constitute external financing free of any public support. The 25 % own contribution requirement shall not apply to investment aid granted for investment in the outermost regions insofar as a lower contribution is necessary to fully accommodate the maximum aid intensity.
11. For an initial investment linked to European territorial cooperation projects, 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 are incurred.
12. The beneficiary shall confirm that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid and shall give a commitment that it will not do so within a period of two years after the initial investment for which aid is requested is completed.

## *Article 16*

### *Regional operating aid*

1. Regional operating aid schemes in outermost regions and sparsely populated areas shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. In sparsely populated areas, regional operating aid schemes shall compensate for additional transport costs under the conditions set out in subparagraph 2 or prevent or reduce depopulation under the conditions set out in subparagraph 3.

The regional operating aid schemes shall compensate up to 100 % of the additional transport costs of goods which have been produced in sparsely populated areas , as well as additional transport costs of goods that are further processed in those areas, under the following conditions:

- (a) the aid is objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit;
- (b) the additional transport costs are calculated on the basis of the journey of the goods inside the national border of the Member State concerned using the means of

transport which results in the lowest costs for the beneficiary. The Member State may impose environmental standards to be met by the mode of transport chosen, and if such standards are imposed on the beneficiary it may base the calculation of the additional transport costs on the lowest cost for meeting those environmental standards.

The regional operating aid schemes shall prevent or reduce depopulation under the following conditions:

- (a) the beneficiaries have their economic activity in the area concerned;
  - (b) the annual aid amount per beneficiary under all operating aid schemes does not exceed 20 % of the annual labour costs incurred by the beneficiary in the area concerned.
3. In outermost regions, the regional operating aid schemes shall compensate for the additional operating costs incurred in those regions as a direct result of one or several of the permanent handicaps referred to in Article 349 of the Treaty, where the beneficiaries have their economic activity in an outermost region if the annual aid amount per beneficiary under all operating aid schemes implemented under this Regulation does not exceed one of the following percentages:
- (a) 35 % of the gross value added annually created by the beneficiary in the outermost region concerned;
  - (b) 40 % of the annual labour costs incurred by the beneficiary in the outermost region concerned;
  - (c) 30 % of the annual turnover of the beneficiary realised in the outermost region concerned.

## *Article 17*

### *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 exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. Urban development projects shall meet the following criteria:
  - (a) they are implemented in assisted areas;
  - (b) they are co-financed by EU Funds implemented under shared management.
3. The total investment in an urban development project under any urban development aid measure shall not exceed EUR 22 million. Where an urban development fund provides loans or guarantees to urban development projects, the nominal amount of

the loan or, respectively in the context of guarantees, of the underlying loan shall be taken into account in calculating the maximum investment amount

4. The eligible costs shall be the overall costs of the urban development project to the extent that they comply with Articles 67 and 68 of Regulation (EU) 2021/1060.
5. Aid may take the form of equity, quasi-equity, loans, guarantees, or a mix thereof. Investment in an urban development project may be combined with aid in the form of a grant or repayable advances, in which case the grant or repayable advances may not exceed 50% of the total investment and may not exceed a nominal amount of EUR 1 million.
6. The urban development aid shall leverage additional investment from independent private investors at the level of the urban development funds or the urban development projects, so as to achieve an aggregate amount reaching a minimum of 20 % of the total financing provided to an urban development project. Funding provided by the European Investment Bank and/or the European Investment at own risk and from own resources up to 10 % of the total financing of an urban development project shall be considered to constitute additional investment for the purpose of this provision.
7. Private and public investors may provide cash or an in-kind contribution or a combination of the two for the implementation of an urban development project. An in-kind contribution shall be taken into account at its market value.
8. The urban development measures shall meet the following conditions:
  - (a) urban development fund managers are selected through an open, transparent and non-discriminatory call in accordance with the applicable Union and national laws;
  - (b) the independent private investors are 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 is 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 is 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 is capped at 25 % of the total investment;
  - (d) in the case of guarantees to private investors in urban development projects, the guarantee rate is limited to 80 % and total losses assumed by a Member State are capped at 25 % of the underlying guaranteed portfolio;
  - (e) the investors are allowed to be represented in the governance bodies of the urban development fund, such as the supervisory board or the advisory committee;

- (f) the Member State provides for a due diligence process in order to ensure a commercially sound investment strategy for implementing the urban development aid measure.
9. Urban development funds shall be managed on a commercial basis and shall ensure profit-driven financing decisions. This shall be considered to be the case when the managers of the urban development fund fulfil the following conditions:
- (a) the managers of urban development funds 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) the remuneration of the managers of urban development funds conforms to market practices. This requirement is considered to be met where a manager is selected through an open, transparent and non-discriminatory call, based on objective criteria linked to experience, expertise and operational and financial capacity;
  - (c) the managers of urban development funds receive a remuneration linked to performance, or share part of the investment risks by co-investing own resources;
  - (d) the managers of urban development funds set out an investment strategy, criteria and the proposed timing of investments in urban development projects, establishing the ex ante financial viability and their expected impact on urban development;
  - (e) a clear and realistic exit scenario exists for each equity and quasi-equity investment.
10. The Member State may assign the implementation of the urban development aid measure to an entrusted entity.

### *Article 18*

#### *Aid to undertakings participating in European territorial cooperation project*

1. Aid to undertakings participating in European territorial cooperation projects shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I of this Regulation are met.
2. Any undertaking participating in a European territorial cooperation project may receive a lump-sum of EUR 22 000 per project.
3. When determined on the basis of eligible costs, the aid shall not exceed 100 % of the costs and EUR 2.2 million per undertaking, per project. To the extent that they are linked to the cooperation project, the following costs, which shall have the meaning

ascribed to them in Commission Delegated Regulation (EU) No 481/2014<sup>36</sup>, or Articles 38 to 44 of Regulation (EU) 2021/1059, shall be eligible costs:

- (a) staff costs;
- (b) office and administrative costs;
- (c) travel and accommodation costs;
- (d) external expertise and services costs;
- (e) equipment costs;
- (f) costs for infrastructure and works.

#### *Article 19*

##### *Aid to SMEs and municipalities participating in community-led local development projects*

1. Aid to SMEs and municipalities participating in CLLD projects shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions set out in this Article and Chapter I are met.
2. To be eligible, municipalities shall be located in assisted areas under Article 107(3), points (a) or (c), of the Treaty.
3. Each CLLD project may receive EUR 200 000 as an overall amount per project.
4. When determined on the basis of eligible costs, the aid shall not exceed 100 % of the eligible costs and EUR 2 million per undertaking, per project. The following costs, set out in Article 34(1) of Regulation (EU) 2021/1060 shall be eligible:
  - (a) the costs of preparatory support, capacity building, training and networking with a view to preparing and implementing a CLLD strategy;
  - (b) implementation of approved operations;
  - (c) preparation and implementation of the cooperation activities;
  - (d) running costs linked to the management of the implementation of the CLLD strategy;
  - (e) animation of the CLLD strategy in order to facilitate exchange between stakeholders to provide information and to promote the strategy and projects, and to support

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<sup>36</sup> Commission Delegated Regulation (EU) No 481/2014 of 4 March 2014 supplementing Regulation (EU) No 1299/2013 of the European Parliament and of the Council with regard to specific rules on eligibility of expenditure for cooperation programmes (OJ L 138, 13.5.2014, p. 45).

potential beneficiaries with a view to developing operations and preparing applications.

## SECTION 2

### AID TO SMEs

#### *Article 20*

##### *Investment aid to SMEs*

1. Investment aid to SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid that exceeds EUR 8.25 million per undertaking per investment project.
3. For the purpose of this Article, 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.
4. The eligible costs shall be one or several of the following:
  - (a) the costs of investment in tangible and intangible assets;
  - (b) the estimated wage costs of employment directly created by the investment project, calculated over two years;
  - (c) a combination of part of the costs referred to in points (a) and (b) but not exceeding the amount of point (a) or (b), whichever is higher.
5. To be considered an eligible cost for the purposes of this Article, an investment shall consist of the following:
  - (a) an investment in tangible and intangible assets related to the setting-up of a new establishment; the extension of an existing establishment (including scaling up); the diversification of the output of an establishment into products or services not previously produced in or provided from the establishment (including scaling up); or a fundamental change in the overall production process of the product(s) or overall provision of the service(s) concerned by the investment in the establishment; or
  - (b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased. Sole acquisition of the shares of an undertaking does not qualify as investment The transaction shall take place under market conditions.

A replacement investment therefore does not constitute an investment within the meaning of this paragraph.

6. Costs related to the lease of tangible assets may be eligible under the following conditions:
  - (a) for land and buildings, the lease continues for at least three years after the expected date of completion of the investment;
  - (b) for plant or machinery, the lease takes the form of financial leasing and the aid beneficiary shall commit to purchase the asset at the expiry of the term of the lease.
7. Intangible assets shall meet all of the following conditions:
  - (a) they are used exclusively in the establishment receiving the aid;
  - (b) they are amortisable;
  - (c) they are purchased under market conditions;
  - (d) they are included in the assets of the undertaking that receives the aid for at least three years.
8. Employment directly created by an investment project shall meet the following conditions:
  - (a) it is created within three years of completion of the investment;
  - (b) there is a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months;
  - (c) it is maintained during a minimum period of three years from the date the post was first filled.
9. The aid intensity shall not exceed:
  - (a) 20 % of the eligible costs in the case of small enterprises;
  - (b) 10 % of the eligible costs in the case of medium-sized enterprises;
  - (c) 100 % of the eligible costs where the total amount of aid under this Article does not exceed EUR 300 000 per undertaking, per investment project, and where the investment is not related to an activity in the sectors of primary agricultural production and primary production of fishery and aquaculture products.

#### *Article 21*

##### *Aid for consultancy in favour of SMEs*

1. Aid for consultancy in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the

notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.

2. This Article shall not apply to aid that exceeds EUR 2.2 million per undertaking, per consultancy project.
3. The eligible costs shall be the costs of consultancy services provided by external consultants.
4. The aid intensity shall not exceed 50 % of the eligible costs.
5. The services concerned shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

#### *Article 22*

##### *Aid to SMEs for participation in fairs*

1. Aid to SMEs for participation in fairs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid that exceeds EUR 2.2 million per undertaking, per year.
3. The eligible costs shall be the costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.
4. The aid intensity shall not exceed 50 % of the eligible costs.

#### *Article 23*

##### *Aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat*

1. Aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 200 000 per beneficiary per calendar year. This threshold shall be EUR 25 000 per beneficiary per calendar year for microenterprises active in the primary production of agricultural products, and EUR 30 000 per beneficiary per calendar year for microenterprises active in the fishery and aquaculture sectors.

3. This Article shall apply to:
  - (a) public interventions in price setting reducing the prices applied by suppliers to microenterprises per unit of electricity, gas or heat;
  - (b) payments made to microenterprises, directly or via suppliers, per unit of electricity, gas or heat consumption compensating for part of the costs of that consumption.
4. The aid measures shall:
  - (a) discriminate neither between suppliers nor between microenterprises;
  - (b) provide that all suppliers are eligible to provide offers for the supply of electricity, gas or heat to microenterprises on the same basis;
  - (c) provide for a mechanism that, if granted via a supplier, ensures that the aid is passed on, to the largest extent possible, to the final beneficiary; and
  - (d) result in a price that is above cost, at a level where effective price competition can occur.
5. The aid amount shall be equal to the payment granted or, in the case of public interventions in price setting, shall not exceed the difference between the market price that would have had to be paid for the total electricity, gas and/or heat consumed by a beneficiary, and the price to be paid for this consumption following the public intervention.

#### *Article 24*

##### *Aid in the form of favourable treatment of remuneration in the form of share options and warrants*

1. Share option or share warrant schemes shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 5 million annually per SME.
3. Aid under the scheme shall take the form of an annual relief from social security contributions and from paying wages.
4. Benefits under these schemes shall be granted without prejudice to the employees' rights under the applicable national social security system.
5. Eligible for aid are undertakings that qualify as SMEs when the share-based remuneration agreement is concluded.

6. Workers benefitting from share options or share warrants shall meet the following cumulative conditions:
- (a) they work for, and receive remuneration from, the eligible SME;
  - (b) they do not own more than 30 per cent of the share capital of the eligible SME at the point in time when they conclude the share-based remuneration agreement, shares owned by, and voting rights of family members included.

### **SECTION 3**

#### **AID FOR ACCESS TO FINANCE FOR SMEs**

##### *Article 25*

###### *Risk finance aid in favour of SMEs provided via financial intermediaries*

1. Risk finance aid schemes in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. Member States, either directly or through an entrusted entity, shall implement the risk finance measure via one or more financial intermediaries. Member States or entrusted entities shall provide a public contribution to financial intermediaries in accordance with paragraphs 9 to 15.

Financial intermediaries, in accordance with paragraphs 16 to 18, shall make risk finance investments as referred to in paragraphs 4 to 8, into eligible undertakings that comply with paragraph 3.

Neither Member States nor entrusted entities shall invest directly into the eligible undertakings without the involvement of a financial intermediary.

3. Eligible undertakings shall be unlisted SMEs and they shall meet, at the time of the initial risk finance investment, at least one of the following conditions:
  - (a) they have not been operating in any market;
  - (b) they have been operating in any market for any of the following periods:
    - (i) less than ten years following their registration;
    - (ii) less than seven years following their first commercial sale;
  - (c) they require an initial investment which, based on a business plan prepared in view of a new economic activity (including scaling up), is higher than 30 % of their average annual turnover in the preceding five years. However, that threshold shall be limited to 15 % for the following investments:

- (i) investments significantly improving the environmental performance of the activity in accordance with Article 51(2);
  - (ii) other environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852;
  - (iii) investments aiming at increasing capacity for the extraction, separation, refining, processing or recycling of a critical raw material listed in Annex II, section 1, of Regulation (EU) 2024/1252<sup>37</sup>;
  - (iv) investments in an eligible undertaking that is a social enterprise;
  - (v) investments aiming at increasing production capacity of defence products as defined in Article 1, point (11) of Regulation 2025/2643<sup>38</sup>.
4. The risk finance investment may also cover follow-on investments made in eligible undertakings, including after the eligibility period referred to in paragraph 3, point (b), if the following conditions are met:
- (a) the total amount of risk finance referred to in paragraph 8 is not exceeded;
  - (b) the undertaking receiving the follow-on investment is an unlisted SME at the moment of the follow-on investment;
  - (c) the undertaking receiving the follow-on investments has not become a ‘linked enterprise’, within the meaning of Article 3(3) of Annex I, with an undertaking that is not the financial intermediary or the independent private investor providing risk finance under the measure and that is not an SME.
5. Risk finance investments into eligible undertakings may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof. Risk finance investments may be combined with aid in the form of a grant or repayable advances, in which case the grant or repayable advances may not exceed 50 % of the total risk finance investment and may not exceed a nominal amount of EUR 1 million.
6. When guarantees are provided, the guarantee shall not exceed 80 % of the underlying loan to the eligible undertaking.

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<sup>37</sup> Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (OJ L, 2024/1252, 3.5.2024).

<sup>38</sup> Regulation (EU) 2025/2643 of the European Parliament and of the Council of 16 December 2025 establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products (‘EDIP Regulation’) (Text with EEA relevance) (OJ L, 2025/2643, 29.12.2025)

7. Risk finance investments in the form of equity and quasi-equity investments in eligible undertakings may cover replacement capital only they also cover new capital representing at least 30 % of each investment round into the eligible undertakings.
8. The total outstanding amount of risk finance investment referred to in paragraph 5 shall not exceed EUR 16.5 million per eligible undertaking. To calculate that maximum risk finance investment amount, the following shall be taken into account:
  - (a) in the case of loans and quasi-equity investments structured as debt, the nominal outstanding amount of the instrument;
  - (b) in the case of guarantees, the nominal outstanding amount of the underlying loan;
  - (c) in the case of a grant, the cash amount of the grant;
  - (d) in the case of a repayable advance, the nominal amount of the repayable advance.
9. The public contribution provided to financial intermediaries may take one of the following forms:
  - (a) equity or quasi-equity, or financial endowment to provide risk finance investment directly or indirectly to eligible undertakings;
  - (b) loans to provide risk finance investment directly or indirectly to eligible undertakings;
  - (c) guarantees to cover losses from risk finance investment directly or indirectly to eligible undertakings;
  - (d) a financial contribution to fund grant payments to eligible undertakings.

Where the public contribution provided to the financial intermediary takes the form of equity and quasi-equity, no more than 30 % of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

10. Risk-reward sharing arrangements between the Member State (or its entrusted entity) and private investors, financial intermediaries or fund managers, shall be adequate and shall comply with the following conditions:
  - (a) for risk finance aid in forms other than guarantees, prioritised returns from profits (asymmetric profit sharing or upside incentives) are given preference over protection against potential losses (downside protection);
  - (b) in the case of asymmetric loss-sharing between public and private investors, the first loss piece borne by the public investor is capped at 25 % of the risk finance investment and does not cover more than 25 % of unexpected losses;
  - (c) for risk finance aid in the form of guarantees:

(i) the guarantee rate is limited to 80 % and total losses assumed by a Member State are capped at a maximum of 25 % of the underlying guaranteed portfolio.

(ii) only guarantees covering expected losses and not more than 25 % of unexpected losses of the underlying guaranteed portfolio are provided free of charge;

(iii) where a guarantee also comprises coverage of more than 25 % unexpected losses, the financial intermediary is required to pay, for the part of the guarantee covering more than 25 % of unexpected losses, a market-conform guarantee premium;

(d) for risk finance in the form of grant payments to final beneficiaries:

(i) the Member State (or its entrusted entity) ensures that any contribution made to financial intermediaries to fund grant payments is fully passed on to final beneficiaries;

(ii) the Member State (or its entrusted entity) ensures that the grants are directly linked and necessary for the risk finance investment;

(iii) the objectives of the grant used in connection with the risk finance investment is to provide incentives to make innovative investments, to support the financial viability and mitigate the risk profile of the investment project, or to enhance the coherence and efficiency of the risk finance scheme.

11. For risk finance measures aimed at providing risk finance investments in the form of equity, quasi-equity or loans to eligible undertakings, the public contribution provided to the financial intermediary shall leverage additional finance from independent private investors at the level of the financial intermediaries or the eligible undertakings, to achieve an aggregate private participation rate reaching the following minimum thresholds:

(a) 10 % of the risk finance investment provided to the eligible undertakings referred to in paragraph 3, point (a);

(b) 40 % of the risk finance investment provided to the eligible undertakings referred to in paragraph 3 point (b);

(c) 60 % of the risk finance investment provided to the eligible undertakings referred to in paragraph 3, point (c), and for follow-on risk finance investment in eligible undertakings after the eligibility period referred to in paragraph 3, point (b).

12. Finance provided by independent private investors benefitting from risk finance aid in the form of tax incentives in accordance with Article 26 shall not be taken into account for the purposes of reaching the aggregate private participation rates set out paragraph 11.

13. The private participation rates mentioned in paragraph 11, points (b) and (c), shall be reduced to 20 % under point (b) and 30 % under point (c) of that paragraph for investments that meet either of the following criteria:
- (i) they are made in assisted areas designated in an approved regional aid map in force at the time of provision of the risk finance investment in application of Article 107(3), point (a), of the Treaty;
  - (ii) they are cofinanced on the basis of the Member State's recovery and resilience plan as approved by the Council;
  - (iii) they are cofinanced from the European Defence Fund in accordance with Regulation (EU) 2021/697 or under the Union Space Programme in accordance with Regulation (EU) 2021/696 of the European Parliament and of the Council<sup>39</sup>;
  - (iv) they are cofinanced by Union funds implemented under shared management covered by Regulation (EU) 2021/1060 or Regulation (EU) 2021/2115 of the European Parliament and of the Council<sup>40</sup>;
  - (v) they are investments in eligible undertakings that are social enterprises.
14. Where a risk finance measure is targeting eligible undertakings at different development stages as referred to in paragraphs 3 and 4, the financial intermediary shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in the underlying portfolio and resulting from the application of the minimum participation rates to such investments as referred to in paragraphs 11 to 13, unless the required participation from independent private investors is achieved at the level of the eligible undertakings.
15. Financial intermediaries and fund managers shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws, ensuring that there is no discrimination on the basis of their place of establishment or incorporation in any Member State. Member States may require that eligible financial intermediaries and fund managers meet predefined criteria that are objectively justified by the nature of the investments.

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<sup>39</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69).

<sup>40</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

16. Risk finance measures shall ensure that the financial intermediaries receiving the public contribution take profit-driven decisions when providing eligible undertakings with risk finance investments. This condition is met where the following cumulative conditions are met:
- (a) the Member State, or the entity entrusted with the implementation of the measure, conducts a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the risk finance measure, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the relevant portfolio of investments;
  - (b) the risk finance investments provided to the eligible undertakings are based on a viable business plan, containing details of product, sales and profitability development, establishing ex ante financial viability;
  - (c) the financial intermediary bases each equity and quasi-equity investment on a clear and realistic exit scenario.
17. Financial intermediaries shall be obliged by law or contract to act in accordance with best practices and with the diligence of a professional manager and shall be managed on a commercial basis. This requirement is met where the intermediary and - depending on the type of risk finance measure - the fund manager, meet the following cumulative conditions:
- (a) they share part of the investment risks by either co-investing their own resources or receiving a remuneration linked to performance, so as to ensure that their interests are permanently aligned with the interests of the Member State or its entrusted entity;
  - (b) they set out an investment strategy, criteria and the proposed timing of investments;
  - (c) investors are allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee, if any.
18. In a risk finance scheme where risk finance investment is provided to eligible undertakings in the form of guarantees, loans or quasi-equity investments structured as debt, the financial intermediary shall undertake risk finance investments into eligible undertakings that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the eligible undertakings in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

## Article 26

### *Risk finance aid to SMEs in the form of tax incentives for private investors who are natural persons*

1. Risk finance aid schemes in favour of SMEs in the form of tax incentives to independent private investors who are natural persons providing risk finance directly or indirectly to eligible undertakings 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, if the conditions set out in this Article and Chapter I are met. A ‘natural person’ for the purposes of this Article means a person that is not a legal entity and that is not an undertaking for the purposes of Article 107(1) of the Treaty.
2. Eligible undertakings are those that fulfil the criteria set out in Article 25(3). The total risk finance investment provided under Article 25 and under this Article to each eligible undertaking shall not exceed the maximum amount set out in Article 25(8).
3. Where the independent private investor provides risk finance indirectly through a financial intermediary, the eligible investment shall take the form of the acquisition of shares or participations in the financial intermediary, which shall in turn provide risk finance investments to eligible undertakings in accordance with Article 25(5) to (8). No tax incentive may be granted in respect of the services provided by the financial intermediary or its managers.
4. Where the independent private investor provides risk finance directly to the eligible undertaking, only the acquisition of newly issued full-risk ordinary shares or notes without maturity date and without interest coupons that can be converted in full-risk ordinary shares subject to predetermined conditions issued by an eligible undertaking shall constitute an eligible investment. Those shares shall be kept for at least three years. Replacement capital shall only be covered under the conditions set out in Article 25(7). Member States may grant tax incentives in any form, provided they are consistent with the objectives of this Article.
5. Where the independent private investor provides risk finance directly to the eligible undertaking, to ensure an adequate participation by that investor, in accordance with Article 25(12), the tax relief, counted as the cumulative maximum tax relief from all tax incentives combined, shall not surpass the following maximum thresholds:
  - (a) 50 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 25(3), point (a);
  - (b) 35 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 25(3), point (b);
  - (c) 20 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 25(3), point (c), or of a follow-on

eligible investment into an eligible undertaking after the eligibility period referred to in Article 25(3), point (b);

- (d) 75 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 25(3), point (a), if the eligible undertakings are social enterprises;
  - (e) 55 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 25(3), point (b) if the eligible undertakings are social enterprises;
  - (f) 30 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 25(3), point (c), if the eligible undertakings are social enterprises.
6. The tax relief thresholds for the direct investments mentioned in paragraph 5 may be increased up to 65 % under point (a), up to 50 % under point (b) and up to 35 % under point (c) for investments that meet either of the following criteria:
- (i) they are made in assisted areas designated in an approved regional aid map in force at the time of provision of the risk finance investment in application of Article 107(3), point (a), of the Treaty;
  - (ii) they receive support on the basis of the Member State's recovery and resilience plan as approved by the Council;
  - (iii) they receive support from the European Defence Fund in accordance with Regulation (EU) 2021/697 or under the Union Space Programme in accordance with Regulation (EU) 2021/696;
  - (iv) they receive support from Union funds implemented under shared management covered by Regulation (EU) 1303/2013, Regulation (EU) 2021/1060 or Regulation (EU) 2021/2115;
  - (v) they are made into an eligible undertaking that is a social enterprise.
7. Where the independent private investor provides risk finance indirectly through a financial intermediary, and in accordance with Article 25(12), the tax relief, counted as the cumulative maximum tax relief from all tax incentives combined, shall not surpass 30 % of the eligible investment carried out by the independent private investor into an eligible undertaking referred to in Article 25(3). This tax relief threshold may be increased up to 50 % for investments referred to in paragraph 6, points (i) to (iv).

## Article 27

### *Risk finance aid in favour of SMEs provided by entrusted entities*

1. Risk finance aid schemes in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid that exceeds, in the case of loans, EUR 2 million per eligible undertaking or, in the case of guarantees, EUR 3 million per eligible undertaking.
3. Member States shall implement the risk finance measure through an entrusted entity who provides the aid to final beneficiaries.
4. Eligible undertakings are those that meet the criteria set out in Article 25(3).
5. Risk finance investments into eligible undertakings may take the form of loans, guarantees, or a mix of these. Risk finance investments may be combined with aid in the form of a grant or repayable advances, in which case the grant or repayable advances shall not exceed 50 % of the total risk finance investment and may not exceed a nominal amount of EUR 1 million.
6. In the case of a loan, the nominal outstanding amount of the loan shall not exceed EUR 2 million per eligible undertaking. In the case of a guarantee, the nominal outstanding amount of the underlying loan shall not exceed EUR 3 million per eligible undertaking. Where aid is provided through a mix of both instruments, the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument.
7. For risk finance measures in the form of loans, the public contribution shall leverage additional finance from independent private investors at the level of the entrusted entity or the eligible undertakings. The private participation rate shall be at least 30 % for financing provided to eligible undertakings. This rate is reduced to 10 % if the investment is provided to an eligible undertaking that is a social enterprise. For private investment at the level of the entrusted entity, the entrusted entity shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in eligible undertakings and eligible undertakings that are social undertakings.
8. For risk finance measures in the form of guarantees, the underlying loan, subject to the condition of paragraph 7 and provided by the independent private investors, constitutes a sufficient minimum private investor participation.

9. Risk-reward sharing arrangements between the entrusted entity and private investors, shall be adequate and shall comply with the following conditions:
  - (a) for risk finance aid in the form of loans, prioritised returns from profits (asymmetric profit sharing or upside incentives) shall be given preference over protection against potential losses (downside protection);
  - (b) in the case of asymmetric loss-sharing between public and private investors, the first loss borne by the public investor shall be capped at 25 % of the risk finance investment;
  - (c) for risk finance aid in the form of guarantees, the guarantee rate shall be limited to 80 % of the underlying loan provided by independent private investors or to 90 % of the underlying loan where the eligible undertaking is a social enterprise.

### *Article 28*

#### *Aid in the form of guarantees on loans provided by financial intermediaries*

1. Aid in the form of guarantees on loans in favour of SMEs meeting the conditions of Article 25(3) 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, if the conditions set out in this Article and Chapter I are met.
2. The nominal amount of the guaranteed part of the loan provided to a final beneficiary shall not exceed EUR 3 million and have a maturity of less than 10 years.
3. Loan financing to the final beneficiaries shall be provided by financial intermediaries whose remuneration shall conform to market practices.
4. Participation in the measure shall be open to all interested financial intermediaries.
5. The financial intermediaries shall be able to demonstrate that they operate a mechanism that ensures that all the advantages are passed on to the largest extent to the eligible undertakings in the form of *ex ante* identifiable interest-rate reductions, higher volumes of financing, or lower collateral requirements.
6. The public guarantee shall not exceed 80 % of the underlying loan at each moment in time, losses shall be sustained proportionally and in the same way by the lender and the guarantor, net recoveries generated from the recuperation of the loan from the securities given by the borrower shall proportionally reduce the losses borne by the lender and the guarantor.
7. The guaranteed loan shall fulfil the following conditions:
  - (a) it is not used to repay or replace existing loans;

- (b) it can cover the costs of investment in tangible and intangible assets or be used to provide working capital.

## *Article 29*

### *Aid for young enterprises and start-ups*

1. Aid schemes for young enterprises and for start-ups 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 set out in this Article and Chapter I are met.
2. Young enterprises are defined as any unlisted small enterprise up to five years following its registration, that meets the following cumulative conditions:
  - (a) it has not taken over the activity of another undertaking, unless the turnover of the overtaken activity accounts for less than 10 % of the turnover of the eligible undertaking in the financial year preceding the take-over;
  - (b) it has not yet distributed profits, with the exception of profit distributions that do not exceed 10 % of the cumulated profits earned since the undertaking's registration;
  - (c) it has not acquired another undertaking or has not been formed through a merger, unless the turnover of the acquired undertaking accounts for less than 10 % of the turnover of the eligible undertaking in the financial year preceding the acquisition or the turnover of the undertaking formed through a merger is less than 10 % higher than the combined turnover that the merging undertakings had in the financial year preceding the merger.

For eligible undertakings that are not subject to registration, the five-year eligibility period shall start from either the moment when the undertaking starts its economic activity or the moment it becomes liable to tax with regard to its economic activity, whichever is earlier.

By way of derogation from the first subparagraph, point (c), undertakings formed through a merger between undertakings eligible for aid under this Article, or resulting from the acquisition of one undertaking eligible for aid under this Article by another undertaking eligible for aid under this Article, shall also be considered eligible undertakings up to five years from the date of registration of the oldest of the merging undertakings or up to five years from the date of the registration of the acquisition.

3. Aid granted under this article shall take the form of:
  - (a) loans, with a maximum duration of 10 years and a maximum nominal amount of EUR 1.1 million, or EUR 1.65 million for undertakings established in assisted areas under Article 107(3), point (c), of the Treaty, or EUR 2.2 million for undertakings established in assisted areas under Article 107(3), point (a), of the Treaty. For loans

with a duration between five years and 10 years, the maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. For loans with a duration of less than five years, the maximum amount shall be the same as for loans with a duration of five years;

- (b) guarantees, with a maximum duration of 10 years and a maximum guaranteed amount of EUR 1.65 million, or EUR 2.48 million for undertakings established in assisted areas under Article 107(3), point (c), of the Treaty, or EUR 3.3 million for undertakings established in assisted areas under Article 107(3), point (a), of the Treaty. For guarantees with a duration between five years and 10 years the maximum amount guaranteed may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the guarantee. For guarantees with a duration of less than five years, the maximum amount guaranteed shall be the same as for guarantees with a duration of five years. The guarantee shall not exceed 80 % of the underlying loan;
  - (c) grants, equity investments or quasi equity investment or reductions of interests rates or guarantee premiums with a maximum gross grant equivalent of EUR 0.5 million or EUR 0.75 million for undertakings established in assisted areas under Article 107(3), point (c), of the Treaty, or EUR 1 million for undertakings established in assisted areas under Article 107(3), point (a), of the Treaty;
  - (d) tax incentives to eligible undertakings with a maximum gross grant equivalent of EUR 0.5 million or EUR 0.75 million for undertakings established in assisted areas under Article 107(3), point (c), of the Treaty, or EUR 1 million for undertakings established in assisted areas under Article 107(3), point (a), of the Treaty.
4. An eligible undertaking can receive support through a mix of the aid instruments referred to in paragraph 3 of this Article, if the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account in order to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument.
  5. For start-ups, the maximum amounts set out in paragraph 3 shall be doubled. For young enterprises, the maximum amounts set out in paragraph 3 shall be doubled only where they are social enterprises.
  6. Aid shall not be granted under this Article to undertakings active in the sector of primary agricultural production, unless it concerns aid for the setting up of young farmers, within the meaning of Article 4(6) of Regulation (EU) 2021/2115, aid for the setting-up of new farmers or aid for the business development of small farms. Such aid shall be limited to EUR 300 000 per undertaking.

7. Where an aid scheme under this Article is implemented through one or more financial intermediaries, the conditions applying to financial intermediaries set out in Article 25(10), (14), (15), (16) and (17), shall apply.
8. In addition to the forms and amounts set out in paragraphs 3, 4 and 5, aid granted under this article can take the form of either a transfer of intellectual property (IP) or a grant of the related access rights, either free of charge or below market value. The transfer or the grant shall be from a research and knowledge-dissemination organisation that has developed the underlying IP through its independent own or collaborative research and development activity, to an eligible undertaking referred to in paragraph 2. The transfer or the grant shall meet the following conditions:
  - (a) the purpose of the transfer of IP or the grant of related access rights is to bring a new product or service to the market;
  - (b) the value of the IP is set at its market value. The value of any contribution, both financial and non-financial, by the eligible undertaking to the costs of the research and knowledge-dissemination organisation's activities that resulted in the IP concerned may be deducted from the market value of the IP for the purpose of calculating the aid;
  - (c) The aid amount of the IP transfer or the grant of the related access rights shall not exceed EUR 1 million. The aid amount corresponds to the value of the IP referred to in point (b), less the deduction referred to in the last sentence of point (b) and less any remuneration due from the beneficiary for that IP. Where the value of the IP exceeds EUR 1 million, the excess may be covered by the eligible undertaking with own funds or other means.

### *Article 30*

#### *Aid to alternative trading platforms specialised in SMEs*

1. Aid in favour of alternative trading platforms specialised in SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions set out in this Article and Chapter I are met.
2. Where the platform operator is a small enterprise, the aid measure may take the form of aid to the platform operator, in which case the conditions set out in Article 29 shall apply.
3. The aid measure may take the form of tax incentives to independent private investors that are natural persons in respect of their risk finance investments made through an alternative trading platform into undertakings eligible under the conditions set out in Article 26(2) and (5). A 'natural person' for the purposes of this Article means a person that is not a legal entity and that is not an undertaking for the purposes of Article 107(1) of the Treaty.

## *Article 31*

### *Aid for scouting costs*

1. Aid for scouting costs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. The eligible costs shall be:
  - (a) the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings pursuant to Article 25 to Article 29;
  - (b) the costs for investment research, as defined in Article 36(1) of Commission Delegated Regulation (EU) 2017/565<sup>41</sup>, in an individual eligible undertaking pursuant to Article 25 to Article 29, provided this research is publicly disseminated, and, if it has been disseminated to clients of the investment research provider before public dissemination, is disseminated publicly in the same form and no later than three months after the first dissemination to clients.
3. Investment research referred to in paragraph 2, point (b), of this Article shall fulfil the requirements set out in Articles 36 and 37 of Delegated Regulation (EU) 2017/565.
4. The aid intensity shall not exceed 50 % of the eligible costs.

## **SECTION 4**

### **AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION**

## *Article 32*

### *Aid for research and development projects*

1. Aid for research and development projects shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds the following thresholds:

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<sup>41</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

- (a) if the project is predominantly fundamental research: EUR 55 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;
  - (b) if the project is predominantly industrial research: EUR 35 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;
  - (c) if the project is predominantly experimental development: EUR 25 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;
  - (d) alternatively to points (b) and (c), if the project is any combination of industrial research and experimental development activities (referred to as ‘applied research’): EUR 25 million per undertaking, per project;
  - (e) if the project is a Eureka project, is implemented by a Joint Undertaking established on the basis of Article 185 or Article 187 of the Treaty, or complies with the conditions set out in Article 32(6), point (d), the amounts referred to in points (a) to (d) are doubled;
  - (f) 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 (a) to (e) are increased by 50 %;
  - (g) aid for feasibility studies in preparation for research activities: EUR 8.25 million per study.
3. The aided part of the research and development project shall completely fall within one or more of the following categories:
- (a) fundamental research;
  - (b) industrial research;
  - (c) experimental development;
  - (d) feasibility studies.

4. The eligible costs of research and development projects shall be allocated to a specific category of research and development (paragraph 3) and shall be the following:
  - (a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
  - (b) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible.
  - (c) costs of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;
  - (d) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
  - (e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project; without prejudice to Article 7(2) such research and development project costs may alternatively be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to 20 %, applied to total eligible research and development project costs referred to in points (a) to (d). In this case, the research and development project costs used for to calculate of the indirect costs shall be established on the basis of normal accounting practices and comprise only eligible research and development project costs referred to in points (a) to (d).
5. The eligible costs for feasibility studies shall be the costs of the study.
6. The aid intensity for each beneficiary shall not exceed:
  - (a) 100 % of the eligible costs for fundamental research;
  - (b) 50 % of the eligible costs for industrial research;
  - (c) 25 % of the eligible costs for experimental development;
  - (d) alternatively to points (b) and (c), 30 % of the eligible costs for a project that involves any combination of industrial research and experimental development activities (referred to as 'applied research');
  - (e) 50 % of the eligible costs for feasibility studies.

7. The aid intensities for industrial research, experimental development and applied research may be increased up to a maximum aid intensity of 80 % of the eligible costs in accordance with points (a) to (d), where points (b), (c) and (d) shall not be combined with each other:
- (a) by 10 percentage points for medium-sized enterprises and by 20 percentage point for small enterprises or, alternatively, where the total aid amount does not exceed EUR 1.2 million per undertaking, per project, by 20 percentage points for aid to any undertaking, regardless of its size;
  - (b) by 15 percentage points if one of the following conditions is met:
    - (i) the project involves effective collaboration:
      - between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and a contracting party to the EEA Agreement, or
      - between an undertaking and one or more research and knowledge-dissemination organisations, where the latter have the right to publish their own research results.
    - (ii) the results of the project are widely disseminated through conferences, publication, open access repositories, or free/open source software;
    - (iii) the beneficiary commits to, without undue delay, make available licences for research results of aided research and development projects, which are protected by intellectual property rights, at a market price and on non-exclusive and non-discriminatory basis for use by interested parties in the EEA, and to widely publish the fact that the project results are available for licencing to interested parties under the specified conditions;
    - (iv) the research and development project is carried out in an assisted area under Article 107(3), point (a), of the Treaty;
  - (c) by 5 percentage points if the research and development project is carried out in an assisted area under Article 107(3), point (c), of the Treaty;
  - (d) by 25 percentage points if the research and development project:
    - (i) has been selected by a Member State following an open call to form part of a project jointly designed by at least three Member States or contracting parties to the EEA Agreement; and
    - (ii) involves effective collaboration between undertakings in at least two Member States or contracting parties to the EEA Agreement when the beneficiary is a SME, or in at least three Member States or contracting parties to the EEA Agreement when the beneficiary is a large enterprise; and

- (iii) if at least one the two following conditions is met:
- the results of the research and development project are widely disseminated in at least three Member States or contracting parties to the EEA Agreement through conferences, publication, open access repositories, or free or open source software;
  - the beneficiary commits to, without undue delay, make available licences for research results from subsidised research and development projects that are protected by intellectual property rights, at a market price and on non-exclusive and non-discriminatory basis for use by interested parties in the EEA, and to widely publish the fact that the project results are available for licencing to the interested parties under the specified conditions.
8. The aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises or, alternatively, where the total aid amount does not exceed EUR 400 000 per study, by 20 percentage points for aid to any undertaking, regardless of its size.

### *Article 33*

#### *Aid for projects awarded a Seal of Excellence quality label*

1. Aid for SMEs for research and development projects as well as feasibility studies awarded a Seal of Excellence quality label under the Horizon Europe programme, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 2.5 million per SME per research and development project or feasibility study.
3. The eligible activities of the aided research and development project or feasibility study shall be those defined as eligible under the Horizon Europe programme rules, excluding activities going beyond experimental development activities.
4. The categories, maximum amounts and methods of calculation of eligible costs of the aided research and development project or feasibility study shall be those defined as eligible under the Horizon Europe programme rules.
5. The total public funding provided for each research and development project or feasibility study shall not exceed the funding rate set out for that project or feasibility study under the Horizon Europe programme rules.

#### *Article 34*

##### *Aid for Marie Skłodowska-Curie actions and ERC Proof of Concept actions*

1. Aid for Marie Skłodowska-Curie actions and ERC Proof of Concept actions awarded a Seal of Excellence quality label under the Horizon Europe programme shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. The eligible activities of the aided action shall be those defined as eligible under the Horizon Europe programme rules.
3. The categories, maximum amounts and methods of calculation of eligible costs of the aided action shall be those defined as eligible under the Horizon Europe programme rules.
4. The total public funding provided for each aided action shall not exceed the maximum level of support provided for in the Horizon Europe programme.

#### *Article 35*

##### *Aid for co-funded research and development projects, feasibility studies or research infrastructure or testing and experimentation infrastructure*

1. Aid provided to a co-funded research and development project, a feasibility study or a research infrastructure or a testing and experimentation infrastructure which is implemented by at least three Member States, or alternatively two Member States and at least one associated country, and selected on the basis of the evaluation and ranking made by independent experts following trans-national calls in line with Horizon Europe Programme rules, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds the maximum amounts defined as eligible under the Horizon Europe programme rules.
3. The eligible activities of the aided research and development project, feasibility study or a research infrastructure or a testing and experimentation infrastructure shall be those defined as eligible under Horizon Europe Programme rules), excluding activities going beyond experimental development activities.
4. The categories, methods of calculation of eligible costs shall be those defined as eligible under the Horizon Europe programme rules.
5. The total public funding provided shall not exceed the funding rate established for the research and development project, a feasibility study or a research infrastructure

or a testing and experimentation infrastructure following the selection, ranking and evaluation under Horizon Europe Programme rules.

6. The funding provided by Horizon Europe Programme shall cover part of the co-funded research and development project or a feasibility study and/or a research infrastructure or a testing and experimentation infrastructure.

### *Article 36*

#### *Aid for Teaming actions*

1. Aid provided to co-funded Teaming actions, involving at least two Member States and selected on the basis of the evaluation and ranking made by independent experts following transnational calls under the Horizon Europe programme rules, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds the funding rate established for the Teaming action following the selection, ranking and evaluation under Horizon Europe programme rules. In addition, for investments in project related tangible and intangible assets the aid shall not exceed 70 % of the investment costs.
3. The eligible activities of the co-funded Teaming action shall be those defined as eligible under Horizon Europe programme rules. Activities going beyond experimental development activities are excluded.
4. The categories, maximum amounts and methods of calculation of eligible costs shall be those defined as eligible under Horizon Europe programme rules. In addition, investment costs in project-related tangible and intangible assets shall be eligible.
5. For investment aid for infrastructure under a Teaming action the following additional conditions shall apply:
  - (a) where the infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles;
  - (b) the price charged for the operation or use of the infrastructure shall correspond to a market price;
  - (c) access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. To avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available;

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

*Article 37*

*Aid involved in the co-funding of projects supported by the European Defence Fund or the European Defence Industrial Development Programme*

1. Aid provided to co-fund a research and development project funded by the European Defence Fund or the European Defence Industrial Development Programme and which is evaluated, ranked and selected in accordance with the European Defence Fund or the European Defence Industrial Development Programme rules, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 80 million per undertaking, per project.
3. The eligible costs of the aided project shall be those defined as eligible under the European Defence Fund or the European Defence Industrial Development Programme rules.
4. The total public funding provided can reach up to 100 % of the eligible costs of the project, meaning that the costs of the project not covered by Union funding can be covered by State aid.
5. In case the aid intensity received by the beneficiary exceeds the maximum aid intensity the beneficiary could have received under Article 32(5), (6) and (7), the beneficiary must pay a market price to the granting authority to use for non-defence applications, the intellectual property rights or prototypes resulting from the project. Non-defence applications are applications in products other than defence-related products listed in the Annex to Directive 2009/43/EC of the European Parliament and of the Council<sup>42</sup>. In any event, the maximum amount to be paid to the granting authority for this use shall not exceed the difference between the aid received by the beneficiary and the maximum amount of aid the beneficiary could have received applying the maximum aid intensity allowed for that beneficiary under Article 32 (6),(7) and (8).

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<sup>42</sup> Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (OJ L 146, 10.6.2009, p. 1).

## Article 38

### *Investment aid for research infrastructure and testing and experimentation infrastructure*

1. Aid for the construction or upgrade of research infrastructure that performs economic activities and for testing and experimentation infrastructure shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 25 million per research infrastructure or per testing and experimentation infrastructure.
3. Where a research infrastructure or a testing and experimentation infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.
4. The price charged for the operation or use of the research infrastructure, or the testing and experimentation infrastructure shall correspond to the market price or reflect their costs including a reasonable margin. SMEs and small mid-caps may be charged prices below market price in compliance with conditions in Article 40.
5. Access to the research infrastructure and testing and experimentation infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. To avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and those conditions shall be made publicly available.
6. The eligible costs shall be the investment costs in intangible and tangible assets.
7. The aid intensity shall not exceed 50 % of the eligible costs. The aid intensity may be increased up to 60 % subject to at least two Member States providing the public funding, or for a research infrastructure or testing and experimentation infrastructure that is evaluated and selected at Union level.
8. Where a research infrastructure or a testing and experimentation infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.

## Article 39

### *Aid for innovation clusters*

1. Aid for innovation clusters shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 15 million per cluster.
3. Investment aid can be granted to the owner of the innovation cluster. Operating aid can be granted to the operator of the cluster. The operator, when different from the owner, can either have a legal personality or be a consortium of undertakings without a separate legal personality. In all instances separate accounting for the costs and revenues of each activity (ownership, operation and use of the cluster) has to be kept according to the applicable accounting standards by each undertaking.
4. Access to the cluster's premises, facilities and activities shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the innovation cluster may be granted preferential access under more favourable conditions. To avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and those conditions shall be made publicly available.
5. The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect the costs of those facilities including a reasonable margin. SMEs and mid-caps may be charged prices below market price in compliance with conditions set out in Article 40.
6. Investment aid may be granted for the construction or upgrade of innovation clusters. The eligible costs shall be the investment costs in intangible and tangible assets.
7. The aid intensity of investment aid for innovation clusters shall not exceed 50 % of the eligible costs. The aid intensity may be increased by 15 percentage points for innovation clusters located in assisted areas meeting the conditions in Article 107(3)(a) of the Treaty and by 5 percentage points for innovation clusters located in assisted areas meeting the conditions in Article 107(3)(c) of the Treaty
8. Operating aid may be granted for the operation of innovation clusters for a period of up to ten years. This period may be extended by up to ten further years.
9. The eligible costs of operating aid for innovation clusters shall be the personnel and administrative costs (including overhead costs) relating to any of the following categories:
  - (a) animation of the cluster to facilitate collaboration, information sharing and the provision or channelling of specialised and customised business support services;

- (b) marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;
  - (c) management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.
10. The aid intensity of operating aid shall not exceed 50 % of the total eligible costs during the period over which the aid is granted.

#### *Article 40*

*Mechanism for passing on to SMEs and small mid-caps transparent aid in the form of prices below the market price by research and knowledge dissemination organisations, research infrastructure, testing and experimentation infrastructure or innovation clusters*

Research and knowledge dissemination organisations, research infrastructure, testing and experimentation infrastructure or innovation clusters may pass on aid received under Article 38 and Article 39 to SMEs and small mid-caps by charging prices below the market price (i.e. through full or partial market price discounts) if the following conditions are met:

- (a) the advantage consisting in obtaining full or partial market price discounts by SMEs and small mid-caps is quantifiable and demonstrable;
- (b) the full or partial market price discounts and the rules in accordance with which SMEs and small mid-caps may apply for and be selected and granted discounts are made publicly available (through web sites and other suitable means) before they are offered; and
- (c) the research and knowledge dissemination organisation, research infrastructure, testing and experimentation infrastructure or innovation cluster shall keep records of the amounts of aid granted to each SME and small mid-caps in the form of full or partial market price discounts for 10 years from the date on which it granted the last aid to the SME and small mid-caps.

#### *Article 41*

##### *Innovation aid for SMEs and small mid-caps*

1. Innovation aid for SMEs and small mid-caps shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 10 million per undertaking, per project.
3. The eligible costs shall be the following:

- (a) costs for obtaining, validating and defending patents and other intangible assets;
  - (b) costs for secondment – meaning temporary employment of staff by a beneficiary with the right for the staff to return to the previous employer – of highly qualified personnel with a tertiary degree and at least five years of relevant professional experience (which may also include doctoral training), from a research and knowledge-dissemination organisation or large enterprise, working on research, development and innovation activities in a newly created function in the beneficiary organisation and not replacing other staff;
  - (c) costs for innovation advisory and support services, including those services provided by research and knowledge dissemination organisations, research infrastructure, testing and experimentation infrastructure or innovation clusters;
  - (d) costs for digitalisation.
4. The aid intensity shall not exceed 50 % of the eligible costs for SMEs and 25% of the eligible costs for small mid-caps.
  5. In the particular cases of aid for innovation advisory and support services and digitalisation the aid intensity can be increased up to 100 % of the eligible costs if the total amount of aid for innovation advisory and support services or aid for digitalisation does not exceed EUR [300 000] per undertaking within any three year period.
  6. SMEs and small mid-caps may be charged prices below market price in compliance with conditions provided in Article 40.

#### *Article 42*

##### *Aid for process and organisational innovation*

1. Aid for process and organisational innovation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 12.5 million per undertaking, per project.
3. Aid to large enterprises shall only be compatible if they effectively collaborate with SMEs in the aided activity.
4. The eligible costs shall be the following:
  - (a) personnel costs of researchers, technicians and other supporting staff to the extent employed on the project;

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

#### *Article 43*

##### *Aid for research and development in the fishery and aquaculture sector*

1. Aid for research and development in the fishery and aquaculture sector shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This article shall not apply to aid which exceeds the amounts referred to in Article 32(2).
3. The beneficiary commits to, without any undue delay, make available licences for research results of aided research and development projects, which are protected by intellectual property rights, at a market price and on non-exclusive and non-discriminatory basis for use by interested parties in the EEA, and to widely publish the fact that the project results are available for licencing to interested parties under the specified conditions.
4. The eligible costs shall be those provided in Article 32(4).
5. The aid intensity shall not exceed 100 % of the eligible costs.

### **SECTION 5**

#### **AID WITH A SOCIAL OBJECTIVE**

##### *Article 44*

##### *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 set out in this Article and Chapter I are met.

2. This Article shall not apply to aid which exceeds EUR 3 million per training project.
3. Aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training. Where national mandatory standards prescribe a minimum content or duration of training activities, aid may only be granted for costs exceeding the minimum standards in force.
4. 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, accommodation costs, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project;
  - (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.
5. The aid intensity shall not exceed 50 % of the eligible costs.
  - (a) It may be increased, up to a maximum aid intensity of 100 % of the eligible costs, as follows:
    - by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;
    - 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;
    - by 10 percentage points if the training is given in a remote region or in an assisted area under Article 107(3), point (a), of the Treaty and by 5 under Article 107(3), point (c), of the Treaty;
    - by 10 percentage points if the training aims at enhancing skills in the fields of digitalisation, science, technology, engineering and mathematics;
    - by 10 percentage points if the training aims at upskilling or reskilling workers in regions covered by a territorial just transition plans in accordance with Regulation (EU) 2021/1056<sup>43</sup>;

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<sup>43</sup> Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund (OJ L 231, 30.6.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/1056/oj>).

- by 10 percentage points if the training is provided by a social enterprise to its own workers.
- (b) 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 trainees are not active members of the crew but are supernumerary on board and the training is carried out on board of ships entered in Union registers.
- (c) Where the total amount of aid under this Article does not exceed EUR 300 000 per training project over any period of one year, the aid intensity may be increased to 100 % of the eligible costs.

#### *Article 45*

##### *Aid for the recruitment of disadvantaged workers in the form of wage subsidies*

1. Aid 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 set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds aid EUR 5.5 million per undertaking, per year.
3. Eligible costs shall be the wage costs over a maximum period of 24 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 36 months following recruitment.
4. The recruitment should result in a net increase in the number of employees in the undertaking concerned, compared with the average over the previous 12 months, unless the post or posts 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.
5. 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, except in the case of lawful dismissal for misconduct.
6. If the period of employment is shorter than 24 months, or 36 months in the case of severely disadvantaged workers, the aid shall be reduced pro rata accordingly.
7. The aid intensity shall not exceed 65 % of the eligible costs.

## *Article 46*

### *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 exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 5.5 million per undertaking, per year.
3. 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) training such staff to assist disadvantaged workers.
4. Aid shall not be granted for costs that are covered by the social security system of the Member State.
5. 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.
6. The aid intensity shall not exceed 65 % of the eligible costs.

## *Article 47*

### *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 set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 11 million per undertaking, per year.
3. Eligible costs shall be the wage costs during which the worker with disabilities is employed. If the worker qualifies as a worker with disabilities after their employment, support can be granted starting as of that point in time. Aid shall not be granted for costs that are covered by the social security system of the Member State.

4. The recruitment should result in a net increase in the number of employees in the undertaking concerned, compared with the average over the previous 12 months, unless the post or posts 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.
5. Workers with disabilities shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts, except in the case of lawful dismissal for misconduct.
6. The aid intensity shall not exceed 85 % of the eligible costs.

#### *Article 48*

##### *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 set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 11 million per undertaking, per year.
3. The eligible costs shall be limited to the costs arising in relation to the worker with disabilities and shall be the following:
  - (a) costs of adapting the premises if in compliance with reasonable accommodation obligations<sup>44</sup>;
  - (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, if in compliance with reasonable accommodation obligations<sup>45</sup>; 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;

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<sup>44</sup> Council Directive 2000/78/EC of 27 November 2000, in particular Article 5, on reasonable accommodation.

<sup>45</sup> Council Directive 2000/78/EC of 27 November 2000, in particular Article 5, on reasonable accommodation.

- (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.

Aid shall not be granted for costs that are covered by the social security system of the Member State.

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

#### *Article 49*

##### *Social aid for transport for residents of remote regions*

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

## SECTION 6

### AID FOR ENVIRONMENTAL PROTECTION

#### *Article 50*

##### *Scope of aid for environmental protection*

This Section shall not apply to aid measures for production of nuclear energy.

#### *Article 51*

##### *Investment aid for climate protection*

1. Investment aid for the reduction, and removal of greenhouse gas emissions, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per project.
3. This Article shall not apply to:
  - (a) measures for which more specific rules are set out in this Section or in Article 80;
  - (b) aid for investments in equipment, machinery and industrial production facilities using fossil fuels including using natural gas, including when fossil fuels are used in combination with other energy sources.
4. An increase in the level of climate protection must be demonstrated in the form of the reduction or removal of greenhouse gas emissions as set out in the following points:
  - (a) investments concerning the decarbonisation of an existing installation of the beneficiary without increase of the production capacity must reduce or capture the direct greenhouse gas emissions from that installation, compared to the situation prior to the investment;
  - (b) investments in new installations or investments increasing production capacity must reduce or capture the direct greenhouse gas emissions from the beneficiary, compared to the counterfactual investment that can be expected to have occurred in the absence of the aid;
  - (c) by exception to points (a) and (b), the following investments are assumed to deliver a reduction or removal of greenhouse gases emissions: investments in dedicated infrastructure for the transport; distribution or storage of low-carbon hydrogen and hydrogen-derived fuels; investments in dedicated infrastructure for transport and

storage of waste heat; investments in dedicated infrastructure for transport of CO<sub>2</sub>; and, investment in a connection to an energy infrastructure for hydrogen, waste heat or CO<sub>2</sub>.

5. Where the aid is granted for investments involving the production, use, transport, distribution or storage of hydrogen and hydrogen-derived fuels, the aided fuels must be either RFNBOs as defined in Directive (EU) 2018/2001 and its implementing or delegated acts or low-carbon fuels as defined in Directive (EU) 2024/1788 and its implementing or delegated acts.
6. Investments to capture CO<sub>2</sub> and either transport it to a storage site for injection and permanent storage in an underground geological formation (“CCS”), or transport it to a CO<sub>2</sub>-consumption or utilisation site for usage of that CO<sub>2</sub> (“CCU”) shall meet the following cumulative conditions:
  - (a) the investment must be integrated into a complete CCS and/or CCU chain;
  - (b) taking into account the avoided costs of CO<sub>2</sub> emissions as a revenue, the NPV of the investment project over its lifetime shall be negative.
7. The eligible costs are:
  - (a) for investments referred to in paragraph 4, points (a) and (c), the total investment costs except investment costs related to permanent storage costs for CCS and investment costs related to use of CO<sub>2</sub> for CCU;
  - (b) for investments referred to in paragraph 4, point (b), the difference between the investment costs of the project and those of a counterfactual investment that can be expected to have occurred in the absence of the aid;
8. The aid intensity shall not exceed:
  - (a) 5 % of the total investment costs for investments referred to in paragraph 4, points (a) and (c), or the following higher aid intensities for investments referred to in paragraph 4, points (a) and (c) that:
    - (i) reduce the existing installation’s greenhouse gas emissions by at least 40 % and, for installations referred to in chapter III of the ETS Directive<sup>46</sup>, bring them in addition below the average emissions of the 10 % most efficient installations, as determined by the implementing regulation for establishment of benchmarks pursuant to Article 10a of Directive 2003/87/EC, in force at the time of the aid application, or

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<sup>46</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC.

- (ii) reduce greenhouse gas emissions of a technical unit within the existing installation by at least 90 %:
  - 60 % of the total investment costs for investments enabling the use of hydrogen or hydrogen-derived fuels, where the share of RFNBOs referred to in paragraph 5 is at least 40 %;
  - 45 % of the total investment costs for investments in electrification combined with energy storage or with demand response, as defined in Article 2, point (20), of Directive (EU) 2019/944;
  - 45 % of the total investment costs for investments in carbon capture equipment that comply with paragraph 6;
  - 35 % of the total investment costs for investments enabling the use of low-carbon fuels referred to in paragraph 5;
  - 30 % of the total investment costs for other investments reducing greenhouse gas emissions;
  - 20 % of the total investment costs for investments in the production of low-carbon fuels referred to in paragraph 5.
- (b) 40 % of the eligible costs for investments referred to in paragraph 4, point (b).
- (c) The aid intensities in point (a) may be increased by:
  - (i) 5 percentage points for aid granted to medium-sized undertakings and 10 percentage points for aid granted to small undertakings or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, 10 percentage points for aid to any undertaking, regardless of its size;
  - (ii) 7.5 percentage points for investments located in assisted areas under Article 107(3), point (a) of the Treaty and 2.5 percentage points for investments located in assisted areas under Article 107(3), point (c) of the Treaty.
- (d) The aid intensity in point (b) may be increased by:
  - (i) 10 percentage points for aid granted to medium-sized undertakings and 20 percentage points for aid granted to small undertakings or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, 20 percentage points for aid to any undertaking, regardless of its size;
  - (ii) 15 percentage points for investments located in assisted areas under Article 107(3), point (a) of the Treaty or and by 5 percentage points

for investments located in assisted areas under Article 107(3), point (c) of the Treaty.

9. Alternatively to the method set out in paragraph 8, the maximum aid amount can be determined as follows:
  - (a) if the discounted revenues exceed the discounted operating costs over the economic lifetime of the investment, the aid may reach up to 100 % of the funding gap but may not exceed 100 % of the investment costs;
  - (b) the aid amount may be determined through a competitive bidding process where at least 70 % of the total selection criteria used for ranking bids and allocating aid are defined in terms of aid in relation to the reduction of CO<sub>2</sub> emissions. In that case, the aid intensity may not exceed 100 % of the total investment costs.

#### *Article 52*

##### *Investment aid for the prevention or reduction of pollution and for actions for climate resilience*

1. Investment aid for the prevention or reduction of pollution and for actions for climate resilience, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per project.
3. This Article shall not apply to:
  - (a) measures for which more specific rules in this Section or in Article 80 apply.
  - (b) aid for investments in equipment, machinery and industrial production facilities using fossil fuels including natural gas, including when fossil fuels are used in combination with other energy sources.
4. The investment must be able to prevent or reduce pollution other than from greenhouse gases or enable a higher adaptive capacity to reduce vulnerability to climate impacts as described below:
  - (a) where Union standards apply, for investments in existing installations without increase of the production capacity, the aid must enable undertakings to go beyond applicable Union standards or comply with Union standards that have been adopted but are not yet in force, if the investment is implemented and finalised at least 18 months before the date of entry into force of the adopted Union standards;
  - (b) in the absence of Union standards, for investments in existing installations without increase of the production capacity, the aid must enable the undertakings to prevent

or reduce pollution other than from greenhouse gases or increase climate resilience compared to the situation prior to the investment;

- (c) for investments in new installations or investments increasing production capacity, the aid must enable the undertakings to prevent or reduce pollution other than from greenhouse gases or increase climate resilience compared to the counterfactual investment that can be expected to have occurred in the absence of aid.

5. The eligible costs are:

- (a) for investments referred to in paragraph 4, points (a) and (b), the total investment costs;
- (b) for investments referred to in paragraph 4, point (c), the difference between the investment costs of the project and those of a counterfactual investment that can be expected to have occurred in the absence of the aid.

6. The aid intensity shall not exceed:

- (a) 5 % of the total investment costs for investments referred to in paragraph 4, points (a) and (b);
- (b) 20 % of the total investment costs for investments referred to in paragraph 4, point (a) going beyond 10 % of the applicable Union standard;
- (c) 20 % of the total investment costs for investments referred to in paragraph 4, point (b) reducing by 40 % the pollution other than from greenhouse gases compared to the situation without the aid, in the absence of Union standards.
- (d) 40 % of the eligible costs for investments referred to in paragraph 4, point (c).
- (e) The aid intensities in points (a) to (c) may be increased by:
  - (i) 5 percentage points for aid granted to medium-sized undertakings and 10 percentage points for aid granted to small undertakings or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, 10 percentage points for aid to any undertaking, regardless of its size;
  - (ii) 7.5 percentage points for investments located in assisted areas under Article 107(3), point (a) of the Treaty or and by 2.5 percentage points for investments located in assisted areas under Article 107(3), point (c) of the Treaty.
- (f) The aid intensity in point (d) may be increased by:
  - (i) 10 percentage points for aid granted to medium-sized undertakings and 20 percentage points for aid granted to small undertakings or, alternatively, where the total aid amount does not exceed EUR 1.5

- million per undertaking, per project, 20 percentage points for aid to any undertaking, regardless of its size;
- (ii) 15 percentage points for investments located in assisted areas under Article 107(3), point (a) of the Treaty or and by 5 percentage points for investments located in assisted areas under Article 107(3), point (c) of the Treaty.
7. Alternatively to the method set out in paragraph 6, the maximum aid amount can be determined as follows:
- (a) if the discounted revenues exceed the discounted operating costs over the economic lifetime of the investment, the aid may reach up to 100 % of the funding gap but may not exceed 100 % of the investment costs;
- (b) the aid amount may be determined through a competitive bidding process where at least 70 % of the total selection criteria used for ranking bids and allocating aid are defined in terms of aid, in relation to the project's contribution to the environmental objectives of the measure, for example the aid requested per unit of environmental protection to be delivered. In that case, the aid intensity may not exceed 100 % of the total investment costs.

### *Article 53*

#### *Investment aid for recharging or refuelling infrastructure*

1. Investment aid for recharging or refuelling infrastructure shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per project and, for schemes, an average annual budget of EUR 300 million.
3. This Article shall only cover aid granted for fixed or mobile recharging or refuelling infrastructure that supplies vehicles, mobile terminal equipment or mobile groundhandling equipment with electricity or hydrogen. Mobile terminal equipment is used for the loading, unloading and transshipment of goods and intermodal loading units and for moving cargo within a terminal area. Mobile groundhandling equipment is used in service activities incidental to air or maritime transport.
4. The aid granted to one undertaking shall not exceed 40 % of the total budget of the scheme concerned.
5. The necessity of aid to invest in recharging or refuelling infrastructure of the same category as the infrastructure that would be deployed with aid (for example, for recharging infrastructure: normal or high power) shall be established through an ex ante open public consultation or an independent market study, which are no older

than one year before the aid measure enters into force. In particular, it shall be established that no such investment is likely to take place on commercial terms within three years from the entry into force of the aid measure. The obligation to conduct an ex ante open public consultation or independent market study in this paragraph shall not apply to:

- (a) aid for the construction, installation, upgrade or extension of recharging or refuelling infrastructure that is not accessible to the public;
  - (b) aid for the construction, installation, upgrade or extension of recharging or refuelling infrastructure for road vehicles where vehicles powered exclusively by electricity (for recharging infrastructure) or vehicles powered at least partially by hydrogen (for refuelling infrastructure) represent respectively less than 5 % of the total number of vehicles of the same category registered in the Member State concerned. Passenger cars and light-duty commercial vehicles shall be considered to be part of the same category of vehicles.
6. For refuelling infrastructure supplying hydrogen, the Member State shall obtain from the beneficiary a commitment that by 31 December 2035 at the latest, the refuelling infrastructure will supply renewable or low-carbon hydrogen.
  7. Where the recharging or refuelling infrastructure is open for access by users other than the aid beneficiary or beneficiaries, including by a restricted group of users, aid shall only be granted for the construction, installation, upgrade or extension of recharging or refuelling infrastructure that provides non-discriminatory access to users, including in relation to fees, authentication and payment methods and other terms and conditions of use. The fees charged to users other than the aid beneficiary or beneficiaries for using the recharging or refuelling infrastructure shall correspond to market prices.
  8. Operators of recharging or refuelling infrastructure that offer or allow contract-based payments on their infrastructure shall not discriminate between mobility service providers, for example by applying preferential access conditions, or through price differentiation without an objective justification.
  9. The eligible costs shall be:
    - (a) the costs of the construction, installation, upgrade or extension of recharging or refuelling infrastructure;
    - (b) the investment costs of on-site production of renewable electricity or renewable hydrogen, and the investment costs of storage units for storing hydrogen or renewable electricity. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.

10. The aid intensity shall not exceed:
- (a) 20 % of the eligible costs when the aid is based on an aid scheme;
  - (b) 20% of the eligible costs when the aid is granted for undertakings that have been awarded a public service contract to provide public passenger transport services by land, rail or water in accordance with Regulation 1370/2007<sup>47</sup> or rail freight transport in accordance with the Guidelines on State aid for land and multimodal transport<sup>48</sup>. In this case, the aid shall be granted only in relation to the recharging or refuelling infrastructure that will be used solely for vehicles covered by the public service contract.
  - (c) The aid intensity in point (a) may be increased by:
    - (i) 20 percentage points for medium-sized enterprises and 30 percentage points for small enterprises, or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, 30 percentage points for aid to any undertaking, regardless of its size;
    - (ii) 15 percentage points for investments located in assisted areas under Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas under Article 107(3), point (c) of the Treaty.
11. Alternatively to the method set out in paragraph 10, the aid amount may be determined through a competitive bidding process where at least 70 % of the total selection criteria used for ranking bids and allocating aid are defined in terms of aid, in relation to the project's contribution to the environmental objectives of the measure, for example aid requested per recharging or refuelling point.

#### *Article 54*

##### *Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles*

1. Investment aid for the acquisition of clean vehicles or zero-emission vehicles for road, railway, air, inland waterway and maritime transport and for the retrofitting of vehicles to qualify as clean vehicles or as zero-emission vehicles shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and

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<sup>47</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

<sup>48</sup> Not yet adopted

exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.

2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per investment project.

3. The investment aid shall concern:

(a) the acquisition and leasing of clean vehicles for, railway, inland waterway and maritime transport. ‘Clean vehicle’ means:

(i) concerning inland waterway vessels, a passenger or cargo vessel, including floating structures self-propelled or not, which is enabled to achieve a yearly average GHG intensity of the energy used on-board during a reporting period that does not exceed the following limits:

-76,4 g CO<sub>2</sub>e/MJ from 1 January 2026 until 31 December 2029;

-61,1 g CO<sub>2</sub>e/MJ from 1 January 2030 until 31 December 2034;

-45,8 g CO<sub>2</sub>e/MJ from 1 January 2035 until 31 December 2039;

-30,6 g CO<sub>2</sub>e/MJ from 1 January 2040 until 31 December 2044;

-15,3 g CO<sub>2</sub>e/MJ from 1 January 2045 until 31 December 2049;

-0 g CO<sub>2</sub>e/MJ from 1 January 2050.

(ii) concerning maritime vessels:

– a sea and coastal vessel for passenger, freight transport, for port operations or for auxiliary activities, with an attained Energy Efficiency Existing Ship Index (EEXI) value equivalent to reducing the EEDI reference line by at least 10 percentage points below the EEXI requirements applicable on 1 January 2023 and enabled to achieve a yearly average GHG intensity of the energy used on-board during a reporting period that does not exceed the following limits:

- 76,4 g CO<sub>2</sub>e/MJ from 1 January 2026 until 31 December 2029;

- 61,1 g CO<sub>2</sub>e/MJ from 1 January 2030 until 31 December 2034;

- 45,8 g CO<sub>2</sub>e/MJ from 1 January 2035 until 31 December 2039;

- 30,6 g CO<sub>2</sub>e/MJ from 1 January 2040 until 31 December 2044;

- 15,3 g CO<sub>2</sub>e/MJ from 1 January 2045; and

– a vessel with at least 40% of the propulsion energy coming from wind-assisted propulsion systems;

- (iii) concerning rail rolling stock: rolling stock that has zero direct tailpipe CO<sub>2</sub> emissions when operated on a track with necessary infrastructure and that uses a conventional engine where such infrastructure is not available (bimode).
- (b) the acquisition and leasing of zero-emission vehicles for road, railway, air, inland waterway and maritime transport. ‘Zero-emission vehicle’ means:
- (i) concerning two and three-wheel vehicles and quadricycles: a vehicle within the scope of Regulation (EU) No 168/2013<sup>49</sup> with zero tailpipe CO<sub>2</sub> emissions, calculated in accordance with the requirements in Article 24 and Annex V to that Regulation;
  - (ii) concerning light-duty road vehicles: a vehicle of category M1, M2 or N1 with zero tailpipe CO<sub>2</sub> emissions, as determined in accordance with the requirements in Commission Regulation (EU) 2017/1151<sup>50</sup>;
  - (iii) concerning heavy-duty road vehicles: a zero-emission heavy duty vehicle as defined in Article 3, point (11), of Regulation (EU) 2019/1242;
  - (iv) concerning inland waterway vessels: an inland vessel for passenger or freight transport with zero direct (tailpipe/exhaust) CO<sub>2</sub> emissions;
  - (v) concerning maritime vessels:
    - a sea and coastal vessel for passenger or freight transport, for port operations or for auxiliary activities that has zero tank-to-wake emissions or
    - uses sailing propulsion as primary source of energy, that is, if it can achieve a relation of P<sub>wind</sub>/P<sub>prop</sub> above 1.
  - (vi) concerning rail rolling stock: rolling stock that has zero direct (tailpipe) CO<sub>2</sub> emissions;
  - (vii) concerning aircraft: an aircraft with zero direct (tailpipe) CO<sub>2</sub> emissions;

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<sup>49</sup> Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (OJ L 60, 2.3.2013, p. 52).

<sup>50</sup> Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 175, 7.7.2017, p. 1).

- (c) the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles as referred to in paragraph 3;
  - (d) the retrofitting of vessels that achieves a reduction of energy consumption of the vessel by at least 15 % expressed in energy (MJ) per deadweight tons per nautical mile for freight vessels, or per gross tonnage per nautical mile for passenger vessels, as demonstrated by computational fluid dynamics (CFD), tank tests or similar engineering calculations.
4. Aid shall be granted for the acquisition or the leasing for a duration of at least 12 months of clean vehicles powered at least partially by electricity or by hydrogen or of zero-emission vehicles and for the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles as referred to in paragraph 3.
  5. Aid for the acquisition and leasing of vehicles and for the retrofitting of vehicles cannot not fall within articles Article 51 or Article 55.
  6. The eligible costs shall be the following:
    - (a) for investments consisting in the purchase of clean vehicles or zero-emission vehicles, the extra costs of purchasing the clean vehicle or the zero-emission vehicle compared to a vehicle of the same category that would have been acquired without the aid;
    - (b) for investments consisting in the leasing of clean vehicles or zero-emission vehicles, the extra costs of leasing the clean vehicle or the zero-emission vehicle compared to a vehicle of the same category that would have been leased without the aid;
    - (c) for investments consisting in the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles, the costs of the investment in the retrofitting.
  7. The maximum aid amount shall be determined according to one of the two following options:
    - (a) The aid intensity shall not exceed:
      - (i) When the aid is granted based on an aid scheme, 20 % of the eligible cost. The aid intensity may be increased by 10 percentage points for zero-emission vehicles. In addition, it may be increased by 20 percentage points for medium-sized enterprises or by 30 percentage points for small enterprises or, alternatively, where the total aid amount does not exceed EUR 1.5 million per project, per undertaking, by 30 percentage points for aid to any undertaking, regardless of its size;
      - (ii) When the aid is granted for undertakings that have been awarded a public service contract to provide public passenger transport services

by land, rail or water in accordance with Regulation 1370/2007 or of rail freight transport in accordance with the Guidelines on State aid for land and multimodal transport, the aid shall be granted only in relation to the acquisition of clean vehicles or zero-emission vehicles that are used for the sole provision of those services, under the contract. The aid intensity shall not exceed 20 % of the eligible cost. The aid intensity may be increased by 5 percentage points for zero-emission vehicles.

- (b) The aid amount may be determined through a competitive bidding process where at least 70 % of the total selection criteria used for ranking bids and allocating aid are defined in terms of aid, in relation to the project's contribution to the environmental objectives of the measure, for example aid requested per clean or zero-emission vehicle. In that case, the aid intensity may not exceed 100 % of the eligible costs of the clean and zero-emission vehicles.

#### *Article 55*

##### *Investment aid for energy efficiency measures other than in buildings*

1. Investment aid enabling undertakings to improve energy efficiency other than in buildings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per project.
3. This Article shall not apply to:
  - (a) aid for energy efficiency measures in buildings;
  - (b) aid for cogeneration and aid for district heating and/or cooling;
  - (c) aid for reducing the environmental footprint of vehicles;
  - (d) aid for investments in equipment, machinery and industrial production facilities using fossil fuels including natural gas, including when fossil fuels are used in combination with other energy sources.
4. The investment must increase the level of energy efficiency of the beneficiary's activities. The level of energy savings shall be calculated on the basis of the final energy consumption of the equipment, compared to the situation without the aid.
5. Aid under this Article may only be granted for investments with a payback period needed to recover the cost of the investments in the absence of aid of at least five years.

6. Aid shall not be granted for investments undertaken to comply with Union standards that have been adopted and are in force. Aid may be granted for investments undertaken to comply with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalised at least 18 months before the standard enters into force.
7. The eligible costs shall be the total investment costs of the energy efficiency improvement.
8. The aid intensity shall not exceed:
  - (a) 5 % of the eligible costs;
  - (b) 30 % of the eligible costs for investments in decarbonised processes provided the investments result in a reduction in the energy consumption per unit of output equal to at least 10 % compared to the situation prior to the investments.
  - (c) The aid intensities under points (a) and (b) may be increased by:
    - (i) 5 percentage points for aid granted to medium-sized undertakings and 10 percentage points for aid granted to small undertakings or, alternatively, 10 percentage points where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, for aid to any undertaking, regardless of its size;
    - (ii) 7.5 percentage points for investments located in assisted areas under Article 107(3) point (a) of the Treaty and by 2.5 percentage points for investments located in assisted areas under Article 107(3) point (c) of the Treaty.
9. Alternatively to the method set out in paragraph 8, the aid amount may be determined through a competitive bidding process where at least 70 % of the total selection criteria used for ranking bids and allocating aid are defined in terms of aid, in relation to the project's contribution to the environmental objectives of the measure, for example aid requested per expected units of energy saved or of energy efficiency gained. In that case, the aid intensity may not exceed 100 % of the total investment costs.

## *Article 56*

### *Investment aid for energy performance measures in buildings*

1. Investment aid enabling undertakings to achieve higher energy performance of buildings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.

2. For the purpose of this Article, ‘social and affordable housing’ means housing made available, pursuant to measures set up at local, regional or national level, to households that are either socially disadvantaged or not able, due to market outcomes and notably market failures, to access housing at affordable conditions.
3. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per investment project. When the aid is provided in the form of a financial instrument via one or more intermediaries as referred to in paragraph 12, this Article shall not apply when the nominal value of the loan (irrespective of whether it embeds a grant component) or the nominal value of the loan underlying the guarantee given by the intermediaries to a final beneficiary, increased by the nominal value of the stand-alone grant component (if any) to that final beneficiary, exceeds EUR 30 million per final beneficiary and per investment project.
4. This Article shall not apply to:
  - (a) aid for cogeneration and aid for district heating and/or cooling;
  - (b) aid for investments in equipment using fossil fuels including natural gas and including when fossil fuels are used in combination with other energy sources.
5. The investment must increase the level of energy performance of the building within the meaning of Article 2, point (8), of Directive 2024/1275/EU.
6. In case of renovation of existing buildings, the aid shall induce an improvement in the energy performance of the building measured in primary energy of at least 20 % compared to the situation before the investment.
7. In case of construction of new buildings, the aid shall induce an improvement in the energy performance of the building, measured in primary energy, of at least 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures transposing Directive 2010/31/EU until 31 December 2027 and of at least 10% compared to the threshold set for the zero-emission building requirements in national measures transposing Directive 2024/1275/EU from 1 January 2028.
8. The aid may be granted either to the building owner(s) or the tenant(s), depending on who is commissioning the energy performance measure.
9. For social housing and affordable housing measures, the Member State shall ensure that the energy performance investment does not involve any additional financial burden for the tenant.
10. The eligible costs shall be the total investment costs directly related to the achievement of a higher level of the energy performance of the buildings.
11. The aid intensities shall not exceed:

- (a) 30 % of the eligible costs for the renovation of existing buildings and
- (b) 15 % of the eligible costs for the construction of new buildings.
- (c) The aid intensities in points (a) and (b) may be increased by the following percentage points up to a maximum of 90 % of the eligible costs :
  - (i) 10 percentage points for aid granted to medium-sized undertakings and 20 percentage points for aid granted to small undertakings or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, 20 percentage points for aid to any undertaking, regardless of its size;
  - (ii) 15 percentage points for investments located in assisted areas under Article 107(3), point (a), of the Treaty and by 5 percentage points for investments located in assisted areas under Article 107(3), point (c), of the Treaty;
  - (iii) 15 percentage points for aid granted to improve the energy performance of existing buildings, where the aid induces an improvement in the energy performance of the building measured in primary energy of at least 40 % compared to the situation before the investment;
  - (iv) 20 percentage points for aid granted either for social and affordable housing projects or to social enterprises.

12. If the aid is provided in the form of a financial instrument via one or more intermediaries, then the following conditions shall apply:

- (a) The intermediaries shall be either an energy efficiency fund or a financial intermediary. An ‘energy efficiency fund’ or ‘EEF’ means a special investment vehicle set up for the purpose of investing in projects to improve the energy performance of buildings. EEFs must be managed by a professional management company with legal personality, which selects and invests in such projects.
- (b) The intermediaries shall pass on the aid to the final beneficiaries in the form of loans, guarantees or grant components or a combination thereof.
- (c) Paragraphs 6 and 7 shall not apply when the financial instrument does not contain a grant component.
- (d) Paragraph 11 shall not apply.

## *Article 57*

### *Aid to facilitate energy performance contracting*

1. Aid to providers of energy performance improvement measures to facilitate energy performance contracting shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million of total nominal outstanding financing per beneficiary.
3. Eligible for aid under this Article are SMEs and small mid-caps that are providers of energy performance improvement measures and the final beneficiaries of the aid.
4. Aid to providers of energy performance improvement measure granted under this Article must aim at facilitating the conclusion of energy performance contracting within the meaning of Article 2, point (33), of Directive (EU) 2023/1791.
5. The aid shall take the form of a senior loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or shall consist of a financial product aimed at financing the provider (for example, factoring or forfaiting).
6. The duration of the loan or guarantee to the provider of energy efficiency improvement measures shall not exceed twenty years.
7. Where the aid takes the form of a senior loan, the co-investment by commercial providers of debt funding shall not be lower than 30 % of the value of the underlying portfolio of energy performance contracts, and the repayment by the provider of energy efficiency improvement measures shall at least be equal to the nominal amount of the loan.
8. Where the aid takes the form of a guarantee, the guarantee shall not exceed 80 % of the underlying loan's principal and losses are sustained proportionally and under the same conditions by the credit institution and the State. The guaranteed amount shall decrease proportionally, in such a way that the guarantee never covers more than 80 % of the outstanding loan.

## *Article 58*

### *Investment aid for the promotion of energy from renewable sources and high-efficiency cogeneration*

1. Investment aid for the promotion of energy from renewable energy sources and high-efficiency cogeneration shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification

requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.

2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per investment project. For assessing whether this threshold is met, all investment components (including production, dedicated infrastructure and storage) shall be considered to be a single integrated project.
3. Investment aid shall be granted for one or more of the following:
  - (a) the production of renewable energy (including renewable fuels);
  - (b) electricity or thermal storage;
  - (c) demand response;
  - (d) the storage of renewable fuels;
  - (e) high-efficiency cogeneration; or
  - (f) dedicated infrastructure linked to projects in points (a) to (e) above
4. This Article shall not apply to the production of electricity from renewable fuels of non-biological origin.
5. Where aid is granted for the production or storage of renewable energy from biomass or from products produced from biomass, such biomass shall comply with the sustainability and greenhouse gases emissions-saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts. For aid to renewable fuels produced from biomass, such fuels shall be made from the feedstock listed in Annex IX to that Directive.
6. Investment aid for high-efficiency cogeneration shall not be granted to fossil fuel-based cogeneration installations, except where such installations are based on natural gas and meet the criteria of Article 26, point 4(b) of Directive (EU) 2023/1791.
7. Investment aid for demand response shall only be granted to investments in hardware, software and communication systems which are necessary to enable demand response, including market platforms for local services, aggregation, data interoperability, cybersecurity, metering and monitoring of electricity consumption.
8. The investment aid shall be granted in respect of newly installed or refurbished capacities.
9. The eligible costs shall be the total investment cost. The maximum aid amount shall be determined according to one of the following options:
  - (a) The aid intensity shall not exceed:

- 30 % of the eligible costs for investments in high-efficiency cogeneration based on gas;
  - 45 % of the eligible costs for any other investment covered by this Article, including the construction or upgrade of dedicated infrastructure.
- (b) 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 or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, by 20 percentage points for aid to any undertaking, regardless of its size.
- (c) The aid intensity may reach 100 % of the eligible costs where aid is granted in a competitive bidding process, where at least 70 % of the total selection criteria used for ranking bids and allocating aid are defined in terms of aid per unit of output or capacity.

#### *Article 59*

##### *Direct price support for the production of electricity from renewable sources*

1. Aid in the form of direct price support for the production of electricity from renewable energy sources, excluding the production of electricity from renewable fuels of non-biological origin, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid for electricity generation projects:
  - (a) from solar energy sources with an installed capacity above 80 MW;
  - (b) from onshore wind energy sources with an installed capacity above 40 MW;
  - (c) from other renewable energy sources with an installed capacity above 40 MW;
  - (d) in demonstration projects below the thresholds in points (a), (b) or (c) above, where aid exceeds EUR 30 million per undertaking per project.
3. Where aid is granted for the production of renewable electricity from biomass or from products produced from biomass, such biomass shall comply with the sustainability and greenhouse gases emissions-saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.
4. The aid amount shall be determined according to a competitive bidding process, where at least 70 % of the total selection criteria used for ranking bids and allocating aid are defined in terms of aid per unit of output or capacity.
5. The competitive bidding process can be limited to specific technologies where:

- (a) the measure aims specifically to support demonstration projects;
  - (b) a Member State identifies reasons to expect that eligible sectors or innovative technologies have the potential to make an important and cost-effective contribution to environmental protection and deep decarbonisation in the longer term;
  - (c) the measure is required to achieve the diversification necessary to limit grid integration costs, to avoid exacerbating network constraints and to ensure grid stability; a more selective approach can be expected to lead to lower costs to achieve the same level of environmental protection (for example through reduced system integration costs as a result of diversification), or result in less distortion of competition;
  - (d) in the case of renewable electricity produced from biomass, the Member State identifies a need to avoid distortions on the market for raw materials.
6. Where the bidding process is limited to one or more innovative technologies, the aid granted to these technologies shall not exceed 5 % of the planned new electricity capacity from renewable energy sources per year in total.
7. By way of derogation from paragraph 3, a competitive bidding process is not required where aid is granted to:
- (a) demonstration projects, as defined in Article 2, point (24), of Regulation (EU) 2019/943<sup>51</sup>.
  - (b) small projects, namely:
    - (i) projects with installed capacity equal or below 1 MW; or
    - (ii) projects with an installed capacity equal or below 6 MW, if they are 100 % owned by SMEs, renewable energy communities as defined in Article 2, point (16), of Directive (EU) 2018/2001, or citizen energy communities as defined in Article 2, point (11), of Directive (EU) 2019/944; or
    - (iii) for wind generation only, projects with an installed capacity equal or below 18 MW, if they are 100 % owned by small and microenterprises, renewable energy communities or citizen energy communities.
- The aid amount for such projects shall not exceed the simplified funding gap.
8. Aid shall be granted in the form of a two-way contract for difference, designed in line with Article 19d(2) of Regulation (EU) 2019/943. A two-way contract for difference is a contract between a power-generating facility operator and a counterpart, usually a public entity, which provides both minimum remuneration

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<sup>51</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

protection and a limit to excess remuneration. The duration of such contract shall not exceed 25 years after the aided installation starts operations. Beneficiaries shall sell their electricity in the wholesale market and be subject to balance responsibilities as set out in Article 5 of Regulation (EU) 2019/943. Furthermore, aid shall not be paid for any periods where wholesale market prices are negative.

9. Small-scale renewable electricity installations and demonstration projects may benefit from aid covering the full costs of operation and from an exemption from the requirement to sell the electricity on the market, in accordance with Article 4(3) of Directive (EU) 2018/2001. Installations will be considered to be ‘small-scale’ for the purposes of this paragraph if their capacity is below the applicable threshold under Article 5(4) of Regulation (EU) 2019/943.

### *Article 60*

#### *Aid for the production of renewable energy other than electricity*

1. Aid for the production of energy from renewable sources other than electricity shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per project.
3. Aid shall be granted for one or more of the following:
  - (a) the production of heat from renewable sources, including heat pumps complying with Annex VII to Directive 2018/2001;
  - (b) the production of renewable fuels.
4. Where aid is granted for the production of energy from biomass or from products produced from biomass, such biomass shall comply with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts. For aid to renewable fuels produced from biomass, such fuels shall be made from the feedstock listed in Annex IX to that Directive.
5. Aid shall only be granted over the estimated lifetime of the project at the date of granting. The maximum aid amount shall be determined according to one of the following options:
  - (a) It shall not exceed the simplified funding gap; or
  - (b) It shall be determined through a competitive bidding process.

## *Article 61*

### *Aid in the form of reductions in taxes under Directive 2003/96/EC*

1. Aid schemes in the form of reductions in taxes meeting the conditions of Directive 2003/96/EC shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. The beneficiaries of the tax reduction shall be selected on the basis of transparent and objective criteria.
3. The beneficiaries of the tax reduction shall pay at least the minimum level of taxation set out in Annex I to Directive 2003/96/EC, except for reductions:
  - (a) granted on the basis of Article 15(1), point (a), of Directive 2003/96/EC, for taxable products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources;
  - (b) granted on the basis of Article 15(1), point (b), first, second, fourth and fifth indents, of Directive 2003/96/EC, for electricity (i) of solar, wind, wave, tidal or geothermal origin, (ii) of hydraulic origin produced in hydroelectric installations, (iii) generated from methane emitted by abandoned coalmines, and (iv) generated from fuel cells;
  - (c) granted on the basis of Article 15(1), point (b), third indent, of Directive 2003/96/EC, for electricity generated from biomass or from products produced from biomass, to the extent that biomass is compliant with the sustainability and greenhouse gases emissions-saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts;
  - (d) granted on the basis of Article 15(1), point (d) of Directive 2003/96/EC, for electricity produced from high-efficiency cogeneration;
  - (e) granted on the basis of Article 15(1), point (l), of Directive 2003/96/EC, for products falling within CN code 2705 used for heating purposes;
  - (f) granted on the basis of Article 16(1) of Directive 2003/96/EC.
4. Aid schemes in the form of tax reductions may be based on a reduction of the applicable tax rate or on the payment of a fixed compensation amount, or on a combination of these mechanisms.
5. Tax reductions granted on the basis of Article 16(1) of Directive 2003/96/EC which are below the minimum level of taxation laid down in Annex I to Directive 2003/96/EC shall be exempted from the notification requirement in Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability

and greenhouse gases emissions-saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts, and are made from the feedstock listed in Annex IX to that Directive.

## *Article 62*

### *Aid in the form of reductions in environmental taxes or parafiscal levies*

1. Aid schemes in the form of reductions in environmental taxes or parafiscal levies shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 50 million per scheme per year.
3. Environmental tax or parafiscal levy means a tax or a levy applied on products or services that have a clear negative effect on the environment or which seeks to charge certain activities, goods or services so that the environmental costs may be included in their price or so that producers and consumers are oriented towards activities which better protect the environment.
4. This Article shall not apply to reductions in taxes or levies on energy products and electricity, defined in Article 2 of Directive 2003/96/EC.
5. Aid in the form of reductions in environmental taxes or parafiscal levies shall be compatible only where the reduction allows to achieve a higher level of environmental protection by including in the scope of the environmental tax or levy undertakings that would not be able to pursue their economic activities without the reduction.
6. Only those undertakings that would not be able to pursue their economic activities without the reduction are eligible for aid. For the purposes of this Article, this is considered the case for undertakings whose production costs would substantially increase due to the environmental tax or parafiscal levy without the reduction and which are not able to pass that increase on to customers. The increase in the production costs shall be calculated as a proportion of the gross value added for each sector or category of beneficiaries.
7. The aid shall be granted in the same way to all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the objectives of the aid measure.
8. The reduction in the environmental tax or parafiscal levy shall not exceed 80 % of the nominal rate of the tax or levy.

### *Article 63*

#### *Investment aid for the remediation of environmental damage, the protection or restoration of nature and the implementation of nature-based solutions for climate change adaptation and mitigation*

1. Investment aid for the remediation of environmental damage, the protection or restoration of nature and the implementation of nature-based solutions for climate change adaptation and mitigation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per investment project.
3. Aid under this Article may be granted for the following activities:
  - (a) as remediation of environmental damage, including damage to the quality of the soil, surface water, groundwater or the marine environment;
  - (b) as nature-based solutions for climate change adaptation and mitigation: actions to protect, conserve, restore, sustainably use nature that simultaneously provide environmental social and economic benefits and help build resilience;
  - (c) as protection or restoration of nature, i.e. for actively or passively assisting the recovery of an ecosystem in order to improve its structure and functions, with the aim of conserving or enhancing biodiversity and ecosystem resilience, through improving an area of a habitat type to good condition, re-establishing favourable reference area, and improving a habitat of a species to sufficient quality and quantity;
4. This Article shall not apply to:
  - (a) aid to make good the damage caused by certain natural disasters, such as earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin;
  - (b) aid for remediation or restoration of nature following the closure of power plants and mining or extraction operations to the extent that the aid in question is for the closure of power plants using coal, peat or oil shale and of mining operations relating to coal, peat or oil shale extraction.
5. Without prejudice to Directive 2004/35/CE<sup>52</sup> or other relevant Union rules on liability for environmental damage, where the entity or undertaking liable for the

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<sup>52</sup> Directive 2004/35/CE 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 (OJ L 143, 30.4.2004, p. 56).

environmental damage under the law applicable in each Member State is identified, that entity or undertaking shall finance the works necessary to prevent and correct environmental degradation and contamination in accordance with the ‘polluter pays’ principle, and no aid shall be granted for the works that the entity or undertaking would be legally required to conduct. The Member State shall take all necessary measures, including legal action, to identify the liable entity or undertaking at the origin of the environmental damage and make it bear the relevant costs. Where the entity or undertaking liable under the applicable law cannot be identified or made to bear the costs of remediating the environmental damage it has caused, in particular because the liable undertaking has ceased to legally exist and no other undertaking can be regarded as its legal or economic successor, or where there is insufficient financial security to meet the costs of remediation, aid may be granted to support the remediation works. Aid shall not be granted for the implementation of compensatory measures referred to in Article 6(4) of Council Directive 92/43/EEC<sup>53</sup>. Aid may be granted under this Article to cover the extra costs necessary to increase the scope or ambition of those measures, beyond the legal obligations under Article 6(4) of Directive 92/43/EEC.

6. For investments in the remediation of environmental damage, the eligible costs shall be the costs incurred for the remediation works, less the increase in the value of the land or property. The evaluations of the increase in the value of the land or property resulting from remediation shall be carried out by an independent qualified expert.
7. For investments in the protection or restoration of nature and in the implementation of nature-based solutions for climate change adaptation and mitigation, the eligible costs shall be the total costs of the works resulting in the contribution to protecting or restoring nature or in the implementation of nature-based solutions for climate change adaptation and mitigation.
8. The aid intensity shall not exceed:
  - (a) 100 % of the eligible costs for investments in the remediation of environmental damage;
  - (b) 70 % of the eligible costs for investments in the protection or restoration of nature and in nature-based solutions for climate change adaptation and mitigation. 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 or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, by 20 percentage points for aid to any undertaking, regardless of its size.

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<sup>53</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

## Article 64

### *Investment aid for district heating and/or cooling*

1. Investment aid for district heating and/or cooling systems shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 50 million per undertaking per project.
3. Investment aid shall be granted for the construction, extension, or upgrade of:
  - (a) district heating and/or cooling generation installations within the meaning of Article 2, point (19), of Directive 2010/31/EU;
  - (b) thermal storage; or
  - (c) the distribution network, comprising both the primary – transmission – and secondary network of pipelines to supply heating or cooling to consumers, as well as smart measuring devices directly enabling the interactive and intelligent management of heating or cooling production, distribution and consumption.
4. Aid shall only be granted for district heating and/or cooling systems which are energy efficient within the meaning of Article 2, point (46), of Directive (EU) 2023/1791 or which are part of a plan to improve the efficiency of the district heating and/or cooling system within the meaning of Article 26, point (5) of Directive (EU) 2023/1791. The relevant point in time for assessing whether the energy efficiency criteria are met is the date of the aid application.
5. By way of derogation from paragraph 4, aid may be granted for upgrades of existing thermal storage solutions or distribution networks in district heating and/or cooling systems that are not already or will not become energy efficient, if the following conditions are met:
  - (a) the distribution network becomes suitable for the transmission of heating or cooling generated from renewable energy sources and/or waste heat;
  - (b) the upgrade does not result in an increased generation of energy from fossil fuels.
6. Aid may be granted for energy generation based on renewable sources, including heat pumps compliant with Annex VII to Directive (EU) 2018/2001, waste heat or high-efficiency cogeneration, as well as thermal storage solutions. Aid for energy generation based on waste may be based either on waste that meets the definition of renewable energy sources or waste used to fuel installations that meet the definition

of high-efficiency cogeneration. Waste used as input fuel shall not circumvent the waste hierarchy principle, as defined in Article 4(1), of Directive 2008/98/EC<sup>54</sup>.

7. Aid shall not be granted for the construction or upgrade of fossil fuel-based generation facilities, except where such high-efficiency generation facilities are based on natural gas and meet the criteria of Article 26, point 4(b) of Directive (EU) 2023/1791.
8. The eligible costs shall be the investment costs related to the construction, extension or upgrade of the district heating and/or cooling system. The maximum aid amount shall be determined according to one of the following options:
  - (a) The aid intensity shall not exceed 30 % of the eligible costs. 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 or, where the total aid amount does not exceed EUR 2.5 million per undertaking, per project, by 20 percentage points for aid to any undertaking, regardless of its size. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, waste heat, or a combination of the two, including high-efficiency cogeneration based on renewable energy sources.
  - (b) The aid may reach up to 100 % of the funding gap for aid under paragraph 3, points (a) and (b) and of the simplified funding gap for aid under paragraph 3, point (c).
  - (c) The aid amount may be determined through a competitive bidding process.

#### *Article 65*

##### *Investment aid for resource efficiency and for supporting the transition towards a circular economy*

1. Investment aid for resource efficiency and circularity shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per project.
3. For the purpose of this Article, the terms ‘collection’, ‘separate collection’, ‘re-use’, ‘preparing for re-use’, ‘recycling’, ‘waste’, ‘waste hierarchy’, ‘treatment’, ‘recovery’ and ‘disposal’ have the meaning as defined in Articles 3 and 4 of Directive 2008/98/EC.

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<sup>54</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

4. This Article does not apply to aid for waste disposal and to aid for waste recovery operations to generate energy.
5. Aid shall only be granted for the following types of investments:
  - (a) investments improving resource efficiency by reducing the quantity of inputs needed to produce a unit of output or substituting primary inputs with secondary inputs, through one or more of the following:
    - (i) a net reduction in the material resources consumed, with the exception of energy, in the production of a given quantity of output compared to a pre-existing production process used by the beneficiary. The reduction shall be determined by measuring or estimating consumption before and after the implementation of the aid measure, taking into account any adjustment for external conditions that may affect resource consumption;
    - (ii) the replacement of primary raw materials or feedstock with secondary (re-used or recovered, including recycled) raw materials or feedstock;
    - (iii) the replacement of fossil-based raw materials or feedstock with bio-based raw materials or feedstock.
  - (b) investments for the prevention and reduction of waste generation by the beneficiary, the preparing for re-use, decontaminating and recycling of waste generated by the beneficiary, or the preparing for re-use, decontaminating and recycling of waste generated by third parties. In all cases listed in paragraph 5, point (b), the waste:
    - (i) would otherwise be unused, disposed of, or be treated based on a treatment operation that is situated lower in the priority order of the waste hierarchy;
    - (ii) would be treated in a less resource-efficient manner; or
    - (iii) would lead to a lower quality of recycling output.
  - (c) investments for the separate collection of waste, collection of separated waste and sorting of waste with a view to its preparing for re-use or recycling;
  - (d) investments for the separate collection, sorting, decontamination, pre-treatment and treatment of other products, materials or substances generated by the beneficiary or by third parties and which would otherwise be unused or used in a less resource-efficient manner. Other products, materials or substances refers to materials, products and substances other than waste, including by-products referred to in Article 5 of Directive 2008/98/EC, agricultural and forestry residues, waste water, rain water and runoff water, minerals, nutrients, residual gases from production processes, and products, parts or materials that are no longer needed by or useful for its holder but are suitable for re-use.

6. The aid shall not relieve undertakings that generate waste from any costs or obligations relating to the treatment of waste for which they are liable under Union or national law, including under extended producer responsibility schemes, or from costs that should be considered as normal costs for an undertaking.
7. The aid shall not incentivise the generation of waste or the increased use of resources.
8. Investments related to technologies constituting an already profitable established commercial practice throughout the Union without the aid shall not be exempted under this Article from the notification requirement in Article 108(3) of the Treaty.
9. Where Union standards apply, aid under this Article may only be granted:
  - (a) if the aid enables undertakings to go beyond applicable Union standards or
  - (b) if the aid enables undertakings to comply with Union standards that have been adopted but are not yet in force, if the investment is implemented and finalised at least 18 months before the date of entry into force of the adopted Union standards.
10. The eligible costs are:
  - (a) for investments referred to in paragraph 5, point (a), the difference between the investment costs of the project and those of a counterfactual investment that can be expected to have occurred in the absence of the aid;
  - (b) for investments referred to in paragraph 5, points (b), (c) and (d), the total investment costs.
11. The aid intensity shall not exceed:
  - (a) 15 % of the total investment costs for investments referred to in paragraph 5, points (b), (c) and (d). The aid intensity may be increased by:
    - (i) 5 percentage points for aid granted to medium-sized undertakings and by 10 percentage points for aid granted to small undertakings or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, 10 percentage points for aid to any undertaking, regardless of its size;
    - (ii) 7.5 percentage points for investments located in assisted areas under Article 107(3), point (a) of the Treaty and by 2.5 percentage points for investments located in assisted areas under Article 107(3), point (c) of the Treaty.
  - (b) 40 % of the eligible costs for investments referred to in paragraph 5, point (a). The aid intensity may be increased by:

- (i) 10 percentage points for aid granted to medium-sized undertakings and by 20 percentage points for aid granted to small undertakings or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, 20 percentage points for aid to any undertaking, regardless of its size;
- (ii) 15 percentage points for investments located in assisted areas under Article 107(3), point (a) of the Treaty and by 5 percentage points for investments located in assisted areas under Article 107(3), point (c) of the Treaty.

## *Article 66*

### *Aid for energy infrastructure*

1. Aid for the construction or upgrade of energy infrastructure shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 70 million per undertaking per project.
3. This Article shall not apply to:
  - (a) energy infrastructure partly or fully exempted from third party access or tariff regulation in accordance with Regulation (EC) No 715/2009<sup>55</sup>, Regulation (EU) 2019/943, Directive (EU) 2019/944 or Directive (EU) 2024/1788;
  - (b) electricity and natural gas storage;
  - (c) gas infrastructure, unless the infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases, or for the transport of more than 50 % hydrogen and/or renewable gases.
4. The eligible costs shall be the total investment costs. The maximum aid amount shall be determined according to one of the following options:
  - (a) An aid intensity of 40 % of eligible costs;
  - (b) The aid may reach up to 100 % of the simplified funding gap;
  - (c) The aid amount may be determined through a competitive bidding process.

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<sup>55</sup> 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 and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

## *Article 67*

### *Aid for studies and consultancy services on environmental protection and energy matters*

1. Aid for studies or consultancy services, including energy audits, directly linked to investments eligible for aid under this Section shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid which exceeds EUR 30 million per undertaking per project.
3. Aid shall not be granted for energy audits carried out to comply with Directive (EU) 2023/1791, unless the energy audit is carried out in addition to the mandatory energy audits under that Directive.
4. The eligible costs shall be the costs of studies or consultancy services provided by external consultants.
5. Where the entire study or consultancy service concerns investments eligible for aid under this Section, the eligible costs shall be the costs of the study or consultancy service. Where only part of the study or consultancy service concerns investments eligible for aid under this Section, the eligible costs shall be the costs of the part of the study or consultancy service relating to those investments.
6. The aid intensity shall not exceed 60 % of the eligible costs. The aid intensity may be increased by 20 percentage points for studies or consultancy services in favour of small undertakings and by 10 percentage points for studies or consultancy services in favour of medium-sized undertakings or, alternatively, where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, by 20 percentage points for aid to any undertaking, regardless of its size.

## **SECTION 7**

### **AID TO MAKE GOOD THE DAMAGE CAUSED BY CERTAIN NATURAL DISASTERS**

## *Article 68*

### *Aid schemes to make good the damage caused by certain natural disasters*

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

2. Aid shall be granted subject to the following conditions:
  - (a) the competent public authorities of a Member State have formally recognised the character of the event as a natural disaster; and
  - (b) there is a direct causal link between the natural disaster and the damages suffered by the affected undertaking.
3. Aid schemes related to a specific natural disaster shall be introduced within three years of the occurrence of the disaster. Aid on the basis of such schemes shall be granted within four years of the occurrence of the disaster.
4. The costs arising from the damage incurred as a direct consequence of the natural disaster, as assessed by an independent expert recognised by the competent national authority or by an insurance undertaking, shall be eligible costs. Such damage may include loss of income due to the full or partial suspension of activity for a period not exceeding six months from the occurrence of the disaster. The calculation of the material damage shall be based on the cost of repairing or the fair market value of the affected asset before the disaster. It shall not exceed the cost of repairing the affected asset or the decrease in its fair market value caused by the disaster, that is to say the difference between the affected assets fair market value immediately before and immediately after the disaster. Loss of income shall be calculated on the basis of the financial data of the affected undertaking and by reference to a comparable past period.
5. The aid and any other payments received to compensate for the damage, including payments under insurance policies, shall not exceed 100 % of the eligible costs.

## **SECTION 8**

### **AID FOR CULTURE AND HERITAGE CONSERVATION**

#### *Article 69*

##### *Aid for culture and heritage conservation*

1. Aid for culture, including heritage conservation, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to investment aid which exceeds EUR 165 million per project and operating aid which exceeds EUR 82.5 million per undertaking per year.
3. The aid shall be granted for cultural purposes and activities. This Article shall not apply to:

- (a) aid for press and magazines, whether published in print or electronically, except for press publications in national minority languages, if linked to the culture of a given linguistic minority, and for magazines that are exclusively cultural;
  - (b) aid for infrastructure if less than 80 % of either the time or the surface area per year is used for cultural purposes. This threshold shall be assessed on average during the period referred to in Article 3(2), point (a).
4. For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets.
  5. For operating aid, the eligible costs shall be the operating costs directly relating to the cultural project or activity.
  6. The maximum aid amount shall be determined according to one of the following options:
    - (a) For investment aid, the aid amount shall not exceed the simplified funding gap, up to 100 % of the investment costs.
    - (b) For operating aid, the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the period for which the aid is granted. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
    - (c) For aid below EUR 2.2 million, the maximum amount of aid may be set at 80 % of the eligible costs.
    - (d) For writing, translating, editing, production, distribution, digitisation and publishing in the field of culture, the maximum aid amount shall not exceed either the difference between the eligible (operating and investment) costs and the project's discounted revenues or 70 % of the eligible (operating and investment) costs.

#### *Article 70*

##### *Aid schemes for audiovisual works*

1. Aid schemes to support the production, pre-production and distribution of audiovisual works, including videogames, shall be compatible with the internal market under Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid schemes exceeding EUR 55 million per scheme per year.

3. Aid shall support a cultural product following a transparent selection process based on a predetermined list of cultural criteria. This Article shall not apply to aid for film studio infrastructure.
4. Member States may make the aid schemes for the production of audiovisual works subject to obligations for the beneficiary to spend a minimum amount or carry out a minimum level of production activity in a particular territory ('territorial spending obligations'), except for videogames. Territorial spending obligations may either:
  - (a) require that up to 160 % of the aid granted for producing a given audiovisual work is spent in the territory of the Member State granting the aid; or
  - (b) calculate the aid granted for producing a given audiovisual work as a percentage of the expenditure on production activities in the granting Member State, typically in case of aid schemes in the form of tax incentives.

In both cases, the maximum expenditure subject to territorial spending obligations shall in no case exceed 80 % of the overall production budget. If a Member State requires a minimum level of production activity in the territory concerned, that level shall not exceed 50 % of the overall production budget.

5. The eligible costs shall be the following:
  - (a) for production aid: the overall costs of producing audiovisual works including costs to improve accessibility for people with disabilities;
  - (b) for pre-production aid: the costs of writing, design, prototyping and development of videogames, the costs of script-writing and the development of other audiovisual works;
  - (c) for distribution aid: the costs of distributing and promoting audiovisual works.
6. The maximum aid intensity shall be as follows:
  - (a) For the production and distribution of audiovisual works, the aid intensity shall not exceed 50 % of the eligible costs. The aid intensity may be increased to 60 % of the eligible costs for cross-border productions funded by more than one Member State and involving producers from more than one Member State. The aid intensity may be increased to 100 % of the eligible costs for difficult audiovisual works and co-productions involving countries and territories eligible to receive official development assistance and included in the Development Assistance Committee (DAC) list compiled by the Organisation for Economic Cooperation and Development. Difficult audiovisual works shall be identified by Member States based on 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.

- (b) For the pre-production of audiovisual works, the aid intensity shall not exceed 100 % of the eligible costs. If the resulting script or project is made into an audiovisual work such as a film, the pre-production costs shall be incorporated in the overall budget and taken into account when calculating the aid intensity.
- 7. Aid shall not be reserved for specific production activities or individual parts of the production value chain.

## SECTION 9

### Infrastructure

#### *Article 71*

##### *Aid for fixed broadband networks*

1. Aid for fixed broadband network deployment, including construction, management and operation, shall be compatible with the internal market under Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid in the form of a financial instrument for which the nominal amount of total financing provided to any final beneficiary per project exceeds EUR 150 million and to other forms of aid where the total costs per project exceed EUR 100 million.
3. The investment shall be located in areas where there is at most one network, existing or credibly planned to be deployed within the relevant time horizon, providing a speed of at least 100 Mbps download under peak-time conditions but below 300 Mbps download under peak-time conditions.

Areas with at least one network that can be upgraded to provide a speed of at least 1 Gbps download under peak-time conditions are not eligible. A network is considered to be upgradable to provide a speed of at least 1 Gbps download under peak-time conditions if it can provide this speed with a marginal investment, such as an upgrade of active equipment, without significant investment in broadband infrastructure.

The conditions set out in the first and second subparagraphs shall be verified by mapping and public consultation.

4. The intervention shall include more than 70 % investment in broadband infrastructure and shall at least triple the download speed compared to the existing networks.

5. The aid amount shall be determined on the basis of a competitive bidding process or, when the aid is granted to a public authority, directly or through an in-house entity, the aid amount shall not exceed the funding gap.
6. The subsidised network shall offer wholesale access under fair and non-discriminatory conditions, including the following access products:
  - (a) for FTTx networks: access to the broadband infrastructure, unbundling or, if approved in advance by the competent authority, virtual unbundling, as well as bitstream access;
  - (b) for cable networks: access to the broadband infrastructure and access to active services;
  - (c) for fixed wireless networks: access to the broadband infrastructure and access to active services;
  - (d) for satellite platforms: access to active services.

Wholesale access to active services shall be offered for at least 10 years from the start of the operation of the network and the wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. Access based on virtual unbundling must be offered for a period of time equal to the lifetime of the infrastructure for which virtual unbundling is a substitute. The same access conditions shall apply to the entire network, irrespective of any change in ownership, management or operation of the network.

## *Article 72*

### *Aid for mobile networks*

1. Aid for mobile network deployment, including construction, management and operation, shall be compatible with the internal market under Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid in the form of a financial instrument for which the nominal amount of total financing provided to any final beneficiary per project exceeds EUR 150 million and to other forms of aid where the total costs per project exceed EUR 100 million.
3. Mobile network deployment shall be located in areas where no mobile networks of the same or more advanced generation exist or are credibly planned to be deployed within the relevant time horizon. These requirements shall be verified by mapping and public consultation.
4. State aid cannot be granted to meet legal obligations linked to the rights of use of spectrum. However, State aid may cover additional costs necessary to provide a

quality of service going beyond the requirements resulting from such legal obligations.

5. The intervention shall include more than 50 % investment in broadband infrastructure and shall at least triple the download speed compared to the existing networks in the intervention areas.
6. The aid amount shall be determined on the basis of a competitive bidding process or, when the aid is granted to a public authority, directly or through an in-house entity, the aid amount shall not exceed the funding gap.
7. The network shall offer wholesale access under fair and non-discriminatory conditions, which shall include access to the broadband infrastructure and access to one active service. Wholesale access to active services shall be offered for at least 10 years from the start of the operation of the network and wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. The same access conditions shall apply on the entire network, irrespective of any change in the ownership, management or operation of the network. Wholesale access shall also be offered regarding parts of the network that have not been State funded or that may not have been deployed by the aid beneficiary.

### *Article 73*

#### *Aid for projects of common interest in the area of trans-European digital connectivity infrastructure*

1. Aid for projects of common interest in the area of trans-European digital connectivity infrastructure financed under Regulation (EU) 2021/1153<sup>56</sup> or awarded a Seal of Excellence quality label under that Regulation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid in the form of a financial instrument for which the nominal amount of total financing provided to any final beneficiary per project exceeds EUR 150 million and to other forms of aid where the total costs per project exceed EUR 100 million.
3. For the purpose of this Article, ‘5G corridor’ means a transport path, road, railway or inland waterway, fully covered with digital connectivity infrastructure, in particular 5G systems, and enabling the uninterrupted provision of synergy digital services as defined in Regulation (EU) 2021/1153 of the European Parliament and of the

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<sup>56</sup> Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 (OJ L 249, 14.7.2021, p. 38).

Council, such as connected and automated mobility, similar smart mobility services for railways or digital connectivity on inland waterways;

4. Projects shall meet the cumulative general compatibility conditions set out in paragraph 5. They shall, in addition, fall under one of the categories of eligible projects set out in paragraph 6 and shall meet all specific compatibility conditions for the relevant category set out in that paragraph. Only projects which refer solely to the elements and entities specified under each relevant category in paragraph 6 shall fall within the scope of the exemption in paragraph 1.
5. The general cumulative compatibility conditions shall be the following:
  - (a) the beneficiary must provide a financial contribution of at least 25 % of the eligible costs, and at least 10 % for projects under paragraph 6, point (d), located in or connecting outermost regions, through its own resources or through external financing not containing any public financial support. When the 25 % contribution of the beneficiary is provided through external financing via an investment platform combining different sources of financing, the condition that external financing shall not contain any public financial support set out in the previous sentence is replaced by the requirement of a presence in the platform of at least 30 % of private investment;
  - (b) only costs that are eligible investment costs under Regulation (EU) 2021/1153 for the deployment of the infrastructure are eligible for aid;
  - (c) the project must be selected in compliance with Regulation (EU) 2021/1153 in one of the following ways:
    - (i) by an independent financial intermediary appointed by the Commission on the basis of commonly agreed investment guidelines;
    - (ii) by the Commission through a competitive bidding process;
    - (iii) by independent experts appointed by the Commission;
  - (d) the project must enable connectivity capabilities going beyond the requirements relating to any existing legal obligations, such as those attached to a right to use spectrum;
  - (e) the project must ensure third party open wholesale access including unbundling under fair, reasonable and non-discriminatory conditions.
6. The categories of eligible projects and the specific cumulative compatibility conditions applicable to them shall be the following:
  - (a) investments in the deployment of a cross-border section of a 5G corridor along a transport corridor identified in the trans-European transport network guidelines as set

out in Regulation (EU) No 1315/2013<sup>57</sup> (TEN-T corridors) that meet the following specific cumulative conditions:

- (i) the project consists of a cross-border section of a 5G corridor which crosses the border between two or more Member States, or crosses the border of at least one Member State and at least one European Economic Area country;
  - (ii) the total cross-border sections of 5G corridors located in a Member State shall not represent more than 15 % of the total length of the 5G corridors along the trans-European transport core network in that Member State that are not covered by any existing legal obligations, such as those attached to a right to use spectrum. Exceptionally, if a Member State supports the deployment of cross-border 5G corridors along its trans-European transport comprehensive network, the total cross-border sections of 5G corridors located in that Member State shall not represent more than 15 % of the total length of the 5G corridors along the trans-European transport comprehensive network in that Member State that are not covered by any existing legal obligations, such as those attached to a right to use spectrum;
  - (iii) the project ensures a significant new investment in the 5G mobile network suitable for connected and automated mobility services going beyond marginal investments related merely to the upgrade of the active elements of the network;
  - (iv) the project supports the deployment of new passive infrastructure only if existing passive infrastructure cannot be reused;
- (b) investments in the deployment of a cross-border section of a pan-European terabit backbone network supporting the objectives of the European High-Performance Computing Joint Undertaking by interconnecting certain computing facilities, supercomputing facilities and data infrastructures that meet the following specific cumulative conditions:
- (i) the project shall deploy or acquire connectivity assets, including Indefeasible Rights of Use, dark fibre or equipment, for building a cross-border section of a pan-European backbone network that supports the interconnection with unconstrained end to end connectivity of a minimum of 1 Tbps, of at least two computing facilities, supercomputing facilities or pieces of data infrastructure that: (1) are hosting entities of the European High Performance Computing Joint Undertaking established in accordance with Council Regulation (EU)

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<sup>57</sup> Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

- 2018/1488<sup>58</sup>, or are research infrastructures and other computing and data infrastructures supporting research flagships and missions set out in Regulation (EU) 2021/695 of the European Parliament and of the Council<sup>59</sup> and Council Regulation (EC) No 723/2009 that contribute to the objectives of the European High-Performance Computing Joint Undertaking; and (2) are located in at least two Member States or at least one Member State and at least one member of the European Research Area;
- (ii) the project ensures a significant new investment in the backbone network going beyond marginal investments, such as investments related to mere software upgrades or licensing;
  - (iii) the acquisition of connectivity assets is carried out through public procurement;
  - (iv) the project supports the deployment of new passive infrastructure only if existing passive infrastructure cannot be reused;
- (c) investments in the deployment of a cross-border section of a backbone network interconnecting the cloud infrastructure of certain socioeconomic drivers that meet the following specific cumulative conditions:
- (i) the project interconnects the cloud infrastructure of socioeconomic drivers that are public administrations or public or private entities entrusted with the operation of services of general interest or of services of general economic interest within the meaning of Article 106(2) of the Treaty;
  - (ii) the project consists of a cross-border section of the deployment of new cross-border backbone networks or a significant upgrade of existing ones that (1) crosses the border between two or more Member States; or (2) crosses the border between at least one Member State and at least one European Economic Area country;
  - (iii) the project covers at least two eligible socioeconomic drivers under point (i), each operating in a different Member State or in one Member State and one European Economic Area country;
  - (iv) the project ensures a significant new investment in the backbone network going beyond marginal investments, such as investments related to mere software upgrades or licensing. The project shall be able to reliably provide symmetric download and upload speeds of at least multiples of 10 Gbps;

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<sup>58</sup> Council Regulation (EU) 2018/1488 of 28 September 2018 establishing the European High Performance Computing Joint Undertaking (OJ L 252, 8.10.2018, p. 1).

<sup>59</sup> Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

- (v) the project supports the deployment of new passive infrastructure only if existing passive infrastructure cannot be reused;
- (d) investments in the deployment of a submarine cable network that meet the following specific cumulative conditions:
- (i) the project consists of a cross-border section of a submarine cable network which (1) crosses the border between two or more Member States; or (2) crosses the border of at least one Member State and at least one European Economic Area country. Alternatively, the entity receiving aid shall only ensure the provision of wholesale services and the supported infrastructure shall improve the connectivity of European outermost regions, overseas territories, or island regions, even within a single Member State;
  - (ii) the project shall not concern routes served already by at least two present or credibly planned backbone infrastructure;
  - (iii) the project ensures a significant new investment in the submarine cable network, by rolling-out a new submarine cable or connection to an existing submarine cable, addressing redundancy issues and going beyond marginal investments. .

#### *Article 74*

##### *Aid for backhaul networks*

1. Aid for backhaul network deployment, including construction, management and operation, shall be compatible with the internal market under Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to aid in the form of a financial instrument for which the nominal amount of total financing provided to any final beneficiary per project exceeds EUR 150 million and to other forms of aid where the total costs per project exceed EUR 100 million.
3. Backhaul network deployment shall be located in areas where there is no backhaul network based on fibre, or on other technologies able to provide the same level of performance and reliability as fibre, existing or credibly planned to be deployed within the relevant time horizon. This shall be verified by mapping and public consultation.
4. The intervention shall include more than 70 % investment in broadband infrastructure and the State funded network shall be based on fibre or on other technologies able to provide the same level of performance as fibre.

5. The aid amount shall be determined on the basis of a competitive bidding process or, when the aid is granted to a public authority, directly or through an in-house entity, the aid amount shall not exceed the funding gap.
6. The network shall offer wholesale access under fair and non-discriminatory conditions which shall include access to the broadband infrastructure and access to active services. Wholesale access to active services shall be offered for at least 10 years from the start of the operation of the network and wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. The same access conditions shall apply to the entire network, irrespective of any change in ownership, management or operation of the network.

### *Article 75*

#### *Connectivity vouchers*

1. Aid in the form of a connectivity voucher scheme for consumers, or for SMEs shall be compatible with the internal market under Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to schemes whose budget exceeds EUR 30 million.
3. The duration of a voucher scheme shall not exceed three years. The validity of the vouchers for end users cannot exceed two years.
4. The following categories of vouchers shall be eligible:
  - (a) vouchers to subscribe to a new broadband service or upgrading the existing subscription to a service providing speeds of at least 30 Mbps download under peak-time conditions. Vouchers shall not be awarded for switching providers providing the same speeds as the speeds already available under the existing subscription or for upgrades of an existing subscription of at least 30 Mbps download under peak-time conditions;
  - (b) vouchers available to SMEs for subscribing to a new broadband service or upgrading the existing subscription to a service providing speeds of at least 100 Mbps download under peak-time conditions. Vouchers shall not be awarded for switching providers providing the same speeds as the speeds already available under the existing subscription or for upgrades of an existing subscription of at least 100 Mbps download under peak-time conditions.
5. The vouchers shall cover up to 50 % of the eligible costs. Eligible costs are the monthly fee, the standard set-up costs and the necessary terminal equipment for the end users. The costs for in-house wiring and limited deployment in the end users' private properties or in the public property in close proximity to the end users'

private properties are also eligible to the extent they are necessary and ancillary to the provision of the service.

6. Member States must carry out a public consultation through publication of the main characteristics of the scheme.
7. The scheme shall ensure equal treatment of all possible service providers and shall offer end users the widest possible choice of providers irrespective of the technologies used. The Member State shall set up a publicly accessible registry of all eligible service providers.
8. Aid shall only be granted if the scheme does not unduly benefit a limited number of providers and does not lead to reinforcing the (local) market power of certain providers.
9. When a provider of broadband services is vertically integrated and has a retail market share above 25 %, it must offer, on the corresponding wholesale access market, wholesale access products on the basis of which any access seeker will be able to provide the eligible services under open, transparent and non-discriminatory conditions.
10. By way of derogation from paragraphs 5, first sentence, 8 and 9, where the total budget of the connectivity voucher scheme does not exceed EUR 1.5 million, the aid intensity may be increased to 100 % of the eligible costs and the aid may be granted without prior market assessment and wholesale access.

#### *Article 76*

##### *Social connectivity vouchers*

1. Aid in the form of a social connectivity voucher scheme for consumers who are either socially disadvantaged or not able, due to market outcomes and notably market failures, to access broadband connectivity at affordable conditions shall be compatible with the internal market under Article 107(2)(a) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply to schemes whose budget exceeds EUR 30 million per year.
3. Social vouchers shall be used to subscribe to new internet access and voice communications services or to retain existing subscriptions to those services.
4. The vouchers may cover up to 100 % of the eligible costs.
5. The eligible costs for aid in the form of a social connectivity voucher shall be the following:

- (a) the monthly fee;
  - (b) the standard set-up costs;
  - (c) the necessary terminal equipment;
  - (d) the costs for in-house wiring and limited deployment in the consumers' fixed location or in the public property in close proximity to the consumers' fixed location, to the extent they are necessary and ancillary to the provision of the services.
6. Member States must carry out a public consultation through publication of the main characteristics of the scheme.
  7. The scheme shall ensure equal treatment of all possible service providers and shall offer consumers the widest possible choice of providers irrespective of the technologies used. The Member State shall set up a publicly accessible registry of all eligible service providers.

### *Article 77*

#### *Aid for sport and multifunctional recreational infrastructure*

1. Aid for sport and multifunctional recreational infrastructure shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. This Article shall not apply, as regards investment aid for sport and multifunctional recreational infrastructure, to aid which exceeds EUR 33 million. This Article shall not apply, as regards operating aid for sport infrastructure, to aid which exceeds EUR 2.2 million per infrastructure per year.
3. For the purpose of this Article, '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 in the sport event shall not be considered as compensation for the purposes of this Regulation.
4. Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall account for at least 20 % of time capacity. This threshold shall be assessed on average during the period referred to in Article 3(2), point (a). If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated. If the infrastructure is used by professional sport clubs, Member States shall ensure that the pricing conditions for its use are made publicly available.

5. Multifunctional recreational infrastructure shall consist of recreational facilities with a multi-functional character offering, in particular, cultural, sport or any other recreational services with the exception of leisure parks and hotel facilities.
6. Access to the sport or multifunctional recreational infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.
7. The aid may take the form of:
  - (a) investment aid, including aid for the construction or upgrade of sport and multifunctional recreational infrastructure;
  - (b) operating aid for sport infrastructure.
8. The eligible costs shall be:
  - (a) for investment aid for sport and multifunctional recreational infrastructure, the investment costs in tangible and intangible assets;
  - (b) for operating aid for sport infrastructure, the operating costs of the provision of services by the infrastructure. Those operating costs exclude depreciation charges and the costs of financing if these have been covered by investment aid.
9. For investment aid for sport and multifunctional recreational infrastructure, the aid amount shall not exceed the simplified funding gap, up to 100 % of the investment costs. Alternatively, for aid not exceeding EUR 2.2 million, the maximum amount of aid may be set at 80 % of the eligible costs.
10. For operating aid for sport infrastructure, the aid amount shall not exceed the operating losses and a reasonable profit over the period for which the aid is granted. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism. Alternatively, for aid not exceeding EUR 2.2 million, the maximum amount of aid may be set at 80 % of eligible costs.

#### *Article 78*

##### *Investment aid for local infrastructure*

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

2. This Article shall not apply to aid which exceeds EUR 11 million or to total costs exceeding EUR 22 million for the same infrastructure.
3. This Article shall not apply to dedicated infrastructure and to aid for broadband, energy, transport, research, recharging and refuelling, port, and airport infrastructure
4. The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall correspond to the market price.
5. The eligible costs shall be the investment costs in tangible and intangible assets.
6. The aid amount shall not exceed:
  - (a) the simplified funding gap, up to 100 % of the investment costs;
  - (b) for aid not exceeding EUR 2.2 million, 80 % of the eligible costs.
7. Dedicated infrastructure shall not be exempted under this Article.

#### *Article 79*

#### *Aid for airports*

1. Aid for an airport shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement in Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.
2. For the purpose of this Article, the following definitions shall apply:
  - (a) ‘air carrier’ has the meaning defined in Article 2, point (10), of Regulation (EC) No 1008/2008<sup>60</sup>;
  - (b) ‘airport services’ means services provided by an airport to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable air carriers to provide air transport services’;
  - (c) ‘groundhandling services’ means services provided to air carriers at airports as described in the Annex to Council Directive 96/67/EC<sup>61</sup>;
  - (d) ‘airport operating losses’ means the difference between the airport’s operating revenue and operating costs;

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<sup>60</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

<sup>61</sup> Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).

- (e) ‘airport operating revenue’ means the revenue from aeronautical activities and any profits from non-aeronautical activities not including revenue in the form of public compensation for tasks falling within the public policy remit, or services of general economic interest;
- (f) ‘airport operating costs’ means the costs of providing airport services, operating security airport infrastructure and cybersecurity airport infrastructure, not including depreciation, interest expenses, taxes and costs falling within the public policy remit or services of general economic interest, for which the airport is compensated by the State.
3. The airport shall be open to all potential air carriers. If capacity is physically limited, the allocation of capacity between air carriers shall take place on the basis of objective, transparent and non-discriminatory criteria.
  4. Aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is granted. Aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years of the granting of aid.
  5. Investment aid shall not be granted for the relocation of existing airports or for the creation of a new airport, including the conversion of an existing airfield into an airport.
  6. Investment aid shall not be granted to airports with average annual passenger traffic of more than three million passengers during the two financial years preceding the year in which aid is granted. Investment aid shall not be expected to result in the airport’s increasing its average annual traffic to above three million passengers within two financial years of the granting of aid.
  7. Investment aid shall not be granted to an airport located within [150-200] kilometres of an existing airport from which scheduled air services, within the meaning of Article 2, point (16), of Regulation (EC) No 1008/2008, are operated, unless travelling time from that existing airport to the airport receiving the aid, by road and rail exceeds [90-120] minutes.
  8. Investment aid shall not exceed what is necessary to accommodate medium-term expected traffic on the basis of reasonable traffic forecasts.
  9. Paragraphs 7 and 8 shall not apply to airports with average annual passenger traffic of up to 500 000 passengers during the two financial years preceding the year in which aid is granted if the aid is not expected to result in the airport increasing its average annual passenger traffic to above 500 000 passengers within two financial years of the granting of aid.

10. Paragraph 7 shall not apply if the investment aid is granted to an airport located within [150-200] kilometres of existing airports from which scheduled air services, within the meaning of Article 2, point (16), of Regulation (EC) No 1008/2008, are operated, if the route between each of these other existing airports and the airport receiving the aid necessarily involves maritime transport with less than daily return frequencies or a total travelling time by maritime transport of at least 90 minutes, or air transportation.
11. The costs eligible for investment aid shall be the costs of investing in airport infrastructure, including planning costs.
12. The amount of investment aid shall not exceed the simplified funding gap and in no case shall it exceed:
  - (a) 50 % of the eligible costs for airports with average annual passenger traffic of one to three million passengers during the two financial years preceding the year in which aid is granted;
  - (b) 75 % of the eligible costs for airports with average annual passenger traffic of up to one million passengers during the two financial years preceding the year in which aid is granted.
  - (c) the amount of the investment costs, where the sum of the discounted free cash flows of the investment, excluding the investment costs, is negative.
13. The maximum aid intensities set out in paragraph 12, points (a) and (b) may be increased by 20 percentage points for airports in remote regions.
14. Operating aid shall not be granted for airports with average annual passenger traffic of more than 500 000 passengers during the two financial years preceding the year in which aid is granted.
15. Operating aid shall not be paid out for any calendar year during which the annual passenger traffic of the airport exceeds 500 000 passengers.
16. The granting of operating aid shall not be made conditional on the conclusion of arrangements with specific air carriers for airport charges, marketing payments or other financial aspects of the air carriers' operations at the airport concerned.
17. The amount of operating aid shall not exceed what is necessary to cover the airport's operating losses, and a reasonable profit over the period for which aid is granted.

#### *Article 80*

#### *Aid for ports*

1. Aid for maritime and inland ports shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification

requirement of Article 108(3) of the Treaty, if the conditions set out in this Article and Chapter I are met.

2. For the purpose of this Article,

- (a) ‘maritime port’ means a port for, principally, the reception of sea-going vessels;
- (b) ‘inland port’ means a port other than a maritime port, for the reception of inland waterway vessels;
- (c) ‘dredging’ means the removal of sediments from the bottom of the waterway access to a port, or in a port;
- (d) ‘sea-going vessels’ means vessels other than those which navigate solely or mainly in inland waterways or in waters within, or closely adjacent to, sheltered waters.

3. This Article shall not apply to aid whose eligible costs exceed:

- (a) EUR 143 million per project in a maritime port and EUR 44 million per project in an inland port; or
- (b) if the port is included in the work plan of a core network corridor as referred to in Article 47 of Regulation (EU) No 1315/2013, EUR 165 million per project in a maritime port and EUR 55 million per project in an inland port.

A dredging project is defined as all dredging carried out within a calendar year.

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

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

5. This Article shall not apply to:

- (a) the construction, installation, or upgrade of refuelling infrastructure supplying vehicles, mobile terminal equipment and mobile groundhandling equipment with fossil-based fuels, such as diesel, natural gas, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG);
- (b) dedicated infrastructure and infrastructure not made available to interested users on an equal and non-discriminatory basis on market terms;
- (c) activities not related to -transport, including industrial production facilities active in a port, offices or shops, as well as port superstructures;

- (d) the construction, installation or upgrade of a refuelling infrastructure supplying hydrogen, unless the beneficiary gives a commitment that by 31 December 2035 at the latest the aided refuelling infrastructure will supply renewable or low-carbon hydrogen;
- (e) the construction, installation or upgrade of a refuelling infrastructure supplying ammonia or methanol, unless the beneficiary gives a commitment that by 31 December 2035 at the latest the aided refuelling infrastructure will supply solely ammonia or methanol the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- (f) on-site production of renewable electricity or renewable hydrogen, if the nominal production capacity exceeds the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.

6. The aid amount shall not exceed the following thresholds:

- (a) For investments into the construction, replacement or upgrade of port infrastructure in maritime ports, the aid amount shall not exceed the simplified funding gap and:
  - (i) 100 % of the eligible costs, where the total eligible costs of the project are up to EUR 22 million;
  - (ii) 80 % of the eligible costs, where the total eligible costs of the project are above EUR 22 million and up to EUR 55 million;
  - (iii) 60 % of the eligible costs, where total eligible costs of the project are above EUR 55 million.

The aid intensity in points (ii) and (iii) may be increased by 10 percentage points for investments in assisted areas under Article 107(3) of the Treaty and by 5 percentage points for investments located in assisted areas under Article 107(3) of the Treaty.

- (b) For investments into the construction, replacement or upgrade of port infrastructure in inland ports, for investments into the construction, replacement or upgrade of access infrastructure and for dredging, the aid amount shall not exceed the simplified funding gap and 100 % of the eligible costs.
- (c) If aid is below EUR 5.5 million per project in a maritime port or EUR 2.2 million per project in an inland port, the maximum amount of aid may be set at 80 % of eligible costs, by way of derogation from points (a) and (b).

## SECTION 10

### **AID INVOLVED IN FINANCIAL INSTRUMENTS AND BUDGETARY GUARANTEES SUPPORTED BY THE INVESTEU FUND [AND THE INVESTEU INSTRUMENT OF THE EUROPEAN COMPETITIVENESS FUND]**

#### *Article 81*

##### *Scope and common conditions*

1. This Section shall apply to aid involved in financial products supported by the InvestEU Fund that provide aid to implementing partners, financial intermediaries or final beneficiaries.
2. The aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and exempted from the notification requirement of Article 108(3) of the Treaty, if the conditions set out in Chapter I, this Article, and either Article 82 or Article 83 are met.
3. The aid shall comply with all applicable conditions set out in Regulation (EU) 2021/523 and the InvestEU Investment Guidelines set out in the Annex to Commission Delegated Regulation (EU) 2021/1078<sup>62</sup>) and in the relevant rules for the European Competitiveness Fund.
4. The maximum thresholds set out in Article 82 and Article 83 shall apply to the total outstanding financing, in so far as that financing provided under any financial product supported by the InvestEU Fund or the European Competitiveness Fund contains aid. The maximum thresholds shall apply:
  - (a) per project in the case of aid with identifiable eligible costs covered by Article 82(2), (3) and (4), Article 82(5), point (a)(i), and Article 82(6), (7), (8) and (9);
  - (b) per final beneficiary in the case of aid without identifiable eligible costs covered by Article 82(5), points (a)(ii), (iii) and (iv), Article 82(10) and Article 83.
5. Aid shall not be granted in the form of refinancing of or guarantees on existing portfolios of financial intermediaries.

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<sup>62</sup> Commission Delegated Regulation (EU) 2021/1078 of 14 April 2021 supplementing Regulation (EU) 2021/523 of the European Parliament and of the Council by setting out the investment guidelines for the InvestEU Fund (OJ L 234, 2.7.2021, p. 18).

## Article 82

### *Conditions for aid involved in financial instruments and budgetary guarantees supported by the InvestEU Fund [and the InvestEU Instrument of the European Competitiveness Fund]*

1. Aid to the final beneficiary under a financial instrument or budgetary guarantee supported by the InvestEU Fund and the European Competitiveness Fund shall:
  - (a) comply with the conditions set out in one of paragraphs 2 to 10; and
  - (b) where the financing is provided in the form of loans to the final beneficiary, have an interest rate that corresponds at least to the base rate of the reference rate applicable at the time of the granting of the loan.
2. Aid for projects of common interest in the area of trans-European digital connectivity infrastructure financed under Regulation (EU) 2021/1153 or awarded a Seal of Excellence quality label under that Regulation shall only be granted to projects meeting all general and specific compatibility conditions set out in Article 73. The nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 150 million.
3. Aid for fixed broadband network deployment and aid for mobile network deployment shall comply with the following conditions:
  - (a) aid shall only be granted to projects meeting all compatibility conditions set out respectively in Article 71, 73 and 75 unless indicated otherwise in points (c) and (d) of this paragraph;
  - (b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 150 million;
  - (c) by way of derogation from Article 71(3), third subparagraph, Article 72(3) and Article 74(3), the identified market failure must be verified either by available mapping not older than 18 months.
4. Aid for energy generation and energy infrastructure shall comply with the following conditions:
  - (a) Aid shall be granted only for investments in energy infrastructure which are not exempted from third party access, tariff regulation and unbundling, based on Regulation (EC) No 715/2009, Regulation (EU) 2019/943, Directive (EU) 2019/944 or Directive (EU) 2024/1788, for the following categories of projects:
    - (i) as regards gas infrastructure, projects included in the prevailing Union list of Projects of Common Interest in Annex VII to Regulation (EU) No 347/2013; and
    - (ii) all projects with regards to electricity infrastructure, hydrogen infrastructure and carbon dioxide infrastructure.

- (b) investment aid for generation of energy from renewable energy sources shall comply with the following requirements:
- (i) aid shall only be granted for new installations selected on a competitive, transparent, objective and non-discriminatory basis in accordance with Article 58(10);
  - (ii) aid may be granted to electricity or thermal storage projects, if the requirements set out in Article 58(1a) are met;
  - (iii) aid may be granted to biomass fuels storage projects, if the requirements set out in Article 58(5) are met;
  - (iv) in case of installations producing renewable hydrogen, aid shall only be granted for installation compliant with the requirements set out in Article 58(3);
  - (v) in case of installations producing energy from biomass or from products produced from biomass, such biomass shall comply with the sustainability and greenhouse gases emissions saving criteria referred to in Article 29 of Directive (EU) 2018/2001 and its implementing or delegated acts. For aid to renewable fuels produced from biomass, such fuels shall be made from the feedstock listed in Annex IX to that Directive.
- (c) The nominal amount of total financing provided to any final beneficiary per project referred to in point (a) under the support of the InvestEU Fund shall not exceed EUR 150 million. The nominal amount of total financing provided to any final beneficiary per project referred to in point (b) under the support of the InvestEU Fund shall not exceed EUR 75 million.
5. Aid for social, educational, cultural and natural heritage infrastructure and activities shall comply with the following conditions:
- (a) the nominal amount of total financing provided to any final beneficiary under the support of the InvestEU Fund shall not exceed:
    - (i) EUR 110 million per project for investments in infrastructure used for the provision of social services and for education; EUR 165 million per project for cultural and heritage conservation purposes and activities set out in Article 69, including natural heritage;
    - (ii) EUR 33 million for activities related to social services;
    - (iii) EUR 82.5 million for activities related to culture and heritage conservation; and
    - (iv) EUR 5.5 million for education and training.
  - (b) aid shall not be granted for training aimed at complying with mandatory national training requirements.

6. Aid for transport and transport infrastructure shall comply with the following conditions:
- (a) aid for infrastructure, except ports, shall be provided only to the following projects:
- (i) projects of common interest as defined in Article 3, point (a), of Regulation (EU) No 1315/2013, except for projects concerning port or airport infrastructure;
  - (ii) connections to Trans-European transport network urban nodes, within the meaning set out in Article 3, point (p), of Regulation (EU) No 1315/2013 of the European Parliament and of the Council;
  - (iii) rolling stock only for the provision of rail transport services not covered by a public service contract within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council<sup>63</sup>, provided the beneficiary is a new entrant. The beneficiary is a new entrant if it is a railway undertaking within the meaning of Article 3(1) of Directive 2012/34/EU of the European Parliament and of the Council<sup>64</sup> and if it received a licence under Article 17(3) of Directive 2012/34/EU for the relevant market segment less than 20 years before the aid is granted and it is not linked within the meaning of Article 3(3) of Annex I to this Regulation to a railway undertaking that received a license within the meaning of Article 3(14) of Directive 2012/34/EU before 1 January 2010;
  - (iv) urban transport, meaning transport within a city or an agglomeration and its commuting zones;
  - (v) recharging or refuelling infrastructure that supplies vehicles with electricity or hydrogen. For aided refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 31 December 2035 at the latest, the refuelling infrastructure will supply renewable or low-carbon hydrogen. This paragraph does not apply to aid for investments relating to recharging and refuelling infrastructure in ports.
- (b) aid for port infrastructure projects shall comply with the following requirements:
- (i) aid may only be granted for investments in access infrastructure and port infrastructure that are made available to interested users on an equal and non-discriminatory basis on market terms;
  - (ii) aid shall not be granted for investments in port superstructures.

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<sup>63</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70 (OJ L 315, 3.12.2007, p. 1).

<sup>64</sup> Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

- (iii) When aid is granted for refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 31 December 2035 at the latest, the refuelling infrastructure will supply renewable or low-carbon hydrogen. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying ammonia or methanol, the beneficiary shall give a commitment that by 31 December 2035 at the latest the aided refuelling infrastructure will supply solely ammonia or methanol the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.
  - (c) the nominal amount of total financing provided under point (a) or (b) to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 165 million.
7. Aid for other infrastructure shall comply with the following conditions:
- (a) aid shall be provided only to the following projects:
    - (i) investment in water supply and waste water infrastructure for the general public;
    - (ii) investment for resource efficiency and circularity in accordance with Article 65(1) to (6) and (10);
    - (iii) investment in research and testing and experimentation infrastructure;
    - (iv) investment in the construction or upgrade of innovation cluster facilities;
  - (b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 110 million.
8. Aid for environmental protection, including climate protection, shall comply with the following conditions:
- (a) aid shall be provided only to the following projects:
    - (i) investments enabling undertakings to remedy or prevent damage (including damaged caused by climate change) to physical surroundings or natural resources by a beneficiary's own activities or by activities of another entity participating in the same project, if (i) the investments do not concern equipment, machinery or industrial production facilities using fossil fuels, including natural gas, including when fossil fuels are used in combination with other energy sources and (ii) in case of investments in equipment, machinery and industrial production facilities using hydrogen, the beneficiary commits to exclusively use renewable hydrogen throughout the lifetime of the investment. Aid shall not be granted under this point for investments undertaken to comply with Union standards that have been adopted, except if the investment is

implemented and finalised at least 18 months before the standard enters into force;

- (ii) measures improving the energy performance of a building or an undertaking, if the investments do not concern equipment, machinery or industrial production using fossil fuels, including natural gas, including when fossil fuels are used in combination with other energy sources. Aid shall not be granted under this point for investments undertaken to comply with Union standards that have been adopted, except if the investment is implemented and finalised at least 18 months before the standard enters into force. ;
- (iii) remediation of environmental damage, insofar as no legal or physical person liable for the environmental damage under the applicable law is identified in line with the ‘polluter pays’ principle as referred to in Article 63(3);
- (iv) studies and consultancy services on environmental protection and energy matters;
- (v) protection or restoration of nature;
- (vi) investment aid for the acquisition of clean vehicles powered at least partially by electricity or by hydrogen, or zero-emission vehicles for road, railway, air, inland waterway and maritime transport and for the retrofitting of vehicles to qualify as clean vehicles or as zero-emission vehicles;

The aid measure shall not support the installation of energy equipment using fossil fuels, including natural gas, including when fossil fuels are used in combination with other energy sources.

The aid may be granted either to the building owner(s) or tenant(s), depending on who obtains the financing for the project.

- (b) the nominal amount of total financing provided to any final beneficiary per project referred to in point (a) under the support of the InvestEU Fund shall not exceed EUR 50 million;
- (c) the nominal amount of total financing provided per project referred to in point (b) under the support of the InvestEU Fund shall not exceed EUR 50 million per final beneficiary and building;
- (d) aid for energy performance improvement measures may also relate to the facilitation of energy performance contracting, subject to the following cumulative conditions:
  - (i) the support is provided to SMEs or small mid-caps that are providers of energy performance improvement measures, and which are the final beneficiaries of the aid;

- (ii) the aid is provided for the facilitation of energy performance contracting within the meaning of Article 2, point (33), of Directive (EU) 2023/1791;
  - (iii) the aid takes the form of a senior loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consists in a financial product aimed at financing the provider (for example, factoring or forfaiting);
  - (iv) the nominal amount of total outstanding financing provided under this point per beneficiary does not exceed EUR 30 million.
9. Aid for research, development, innovation and digitalisation shall comply with the following conditions:
- (a) aid may be granted for:
    - (i) fundamental research;
    - (ii) industrial research;
    - (iii) experimental development;
    - (iv) process innovation or organisational innovation for SMEs;
    - (v) innovation advisory services and innovation support services for SMEs;
    - (vi) digitalisation for SMEs;
  - (b) for projects falling under points (a) (i), (ii) and (iii), the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 75 million. For projects falling under point (a) (iv), (v) and (vi), the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 30 million.
10. SMEs or, where applicable, small mid-caps may, in addition to the categories of aid provided for in paragraphs 2 to 9, also receive aid in the form of financing supported by the InvestEU Fund if the respective conditions are met:
- (a) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 16.5 million and is provided to:
    - (i) unlisted SMEs that have not yet been operating in any market or have been operating for less than 10 years following their registration or less than seven years after their first commercial sale; where either the period of operating for less than 10 years following their registration or less than seven years after their first commercial sale has been applied to a given undertaking, only that period can be applied also to any subsequent aid under this Article to the same undertaking. For undertakings that have acquired another undertaking or were

formed through a merger, the eligibility period applied shall also encompass the operations of the acquired undertaking or the merged undertakings, respectively, except for such acquired or merged undertakings whose turnover accounts for less than 10 % of the turnover of the acquiring undertaking in the financial year preceding the acquisition or, in case of undertakings formed through a merger, less than 10 % of the combined turnover that the merging undertakings had in the financial year preceding the merger. Concerning the registration-related eligibility period, if used, for eligible undertakings that are not subject to registration, the ten-year eligibility period is considered to start from the earlier of either the moment when the undertaking starts its economic activity or the moment when it becomes liable to tax with regard to its economic activity. The financing under the support of the InvestEU Fund may also cover follow-on investments in unlisted SMEs after the eligibility period referred to in this point if the following cumulative conditions are met: (1) the nominal amount of total financing referred to in point (a) is not exceeded, (2) the possibility of follow-on investments was provided for in the original business plan and (3) the final beneficiary receiving the follow-on investment has not become a ‘linked enterprise’, within the meaning of Article 3(3) of Annex I, with another undertaking other than the implementing partner, financial intermediary that is not an implementing partner or an independent investor providing financing under the support of the InvestEU Fund, unless the linked enterprises together qualify as an SME;

(ii) unlisted SMEs starting a new economic activity, where the initial investment shall be higher than 50 % of the average annual turnover in the preceding five years. By derogation from the first sentence, the following shall be considered investments for new economic activities, if the related initial investment, based on a business plan, is higher than 30 % of the average annual turnover in the preceding five years: (1) investments significantly improving the environmental performance of the activity beyond mandatory Union standards in accordance with Article 51(2) of this Regulation, (2) other environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852, and (3) investments aiming at increasing capacity for the extraction, separation, refining, processing or recycling of a critical raw material listed in Annex II, section 1, of Regulation (EU) 2024/1252. The environmentally sustainable character of the investment shall be demonstrated in accordance with Article 3 of Regulation (EU) 2020/852, including the ‘do no significant harm’ principle, or through other comparable methodologies, including, among others, the sustainability proofing for the InvestEU Fund. For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, their compliance with the ‘do no significant harm’ principle is considered met as this has already been verified;

(iii) SMEs and small mid-caps that are innovative enterprises;

- (b) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 16.5 million and is provided to SMEs or small mid-caps whose principal activities are located in assisted areas if the financing is not used for relocation of activities;
- (c) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 2.2 million and is provided to SMEs or small mid-caps.

#### *Article 83*

#### *Conditions for aid involved in intermediated commercially-driven financial products supported by the InvestEU Fund [and the InvestEU Instrument of the European Competitiveness Fund]*

1. Financing to the final beneficiaries shall be provided by commercial financial intermediaries.
2. The commercial financial intermediary that provides financing to the final beneficiary shall retain a minimum risk exposure of 20 % of each financing transaction.
3. The nominal amount of total financing provided by a Member State through an implementing partner to each final beneficiary shall not exceed:
  - (a) EUR 2 million through any commercial financial intermediary, or
  - (b) EUR 8.25 million through all commercial financial intermediaries.

## **CHAPTER IV**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### *Article 84*

#### *Transitional provisions for the application of Regulation (EU) No 651/2014*

Member States may choose to continue applying the rules set out in Regulation (EU) No 651/2014 to aid granted under Union funds implemented under shared management for the remainder of the 2021-2027 programming period. In this respect, ‘assisted areas’ means areas designated in a regional aid map that has been approved in application of Article 107(3), points (a) and (c) of the Treaty and in force at the time of the granting of aid or on 31 December 2026.

## *Article 85*

### *Retroactive application*

This Regulation shall apply to individual aid granted before its entry into force if the aid meets all the conditions set out in this Regulation, with the exception of Article 10.

## *Article 86*

### *Transitional provisions*

1. Any individual aid granted before 1 July 2027 by virtue of any regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98 or Article 1 of Council Regulation (EU) 2015/1588 in force at the time of the granting of the aid shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty, with the exclusion of regional aid.
2. Risk capital aid schemes in favour of SMEs set up before 1 January 2027 which are exempted from the notification requirement of Article 108(3) of the Treaty under Regulation (EC) No 800/2008 or Regulation No 651/2014, shall remain exempted and compatible with the internal market until the termination of the funding agreement, provided the commitment of the public funding into the supported private equity investment fund, on the basis of such agreement, was made before 1 July 2027 and the other conditions for exemption remain met.
3. At the end of the period of application of this Regulation, any aid schemes exempted under this Regulation shall remain exempted for an adjustment period of six months. By way of derogation, the exemption of risk finance aid pursuant to Article 25(9), point (a), shall expire at the end of the period set out in the funding agreement, provided that the commitment of public funding to the supported private equity investment fund was made on the basis of such an agreement within six months of the end of the period of application of this Regulation and all other conditions for exemption remain met.

## *Article 87*

### *Amendments to Regulation (EU) 2022/2472*

Regulation (EU) 2022/2472 is amended as follows:

- (a) in Article 1, the second paragraph is replaced by the following: “Member States may choose, where applicable, to grant aid in compliance with this Regulation or with Regulation (EU) .../....”.
- (b) in Article 1(3), points (a) and (b) are deleted;
- (c) in Article 2, point (23) is deleted;

(d) Article 12 is deleted.

*Article 88*

*Amendments to Regulation (EU) 2022/2473*

Regulation (EU) 2022/2473 is amended as follows:

(a) in Article 1, paragraph 7 is replaced by the following:

“Member States may choose, where applicable, to grant aid in compliance with this Regulation or with Regulation (EU) [new GBER]”;

(b) in Article 2, point (10) is deleted;

(c) Article 12 is deleted.

*Article 89*

*Amendments to Regulation (EU) XX/XX [TBER]*

Regulation (EU) XX/XX [TBER] is amended as follows:

XXX

*Article 90*

This Regulation shall enter into force on 1 January 2027.

It shall apply until 31 December 2034.

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

Done at Brussels,

*For the Commission*  
*The President*  
[...]

# ANNEX I

## SME DEFINITION

### Article 1

#### Enterprise

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

This Annex provides an exhaustive list of criteria for determining if an undertaking qualifies as an SME.

### Article 2

#### Staff headcount and financial thresholds determining enterprise categories

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

### Article 3

#### Types of enterprise taken into consideration in calculating staff numbers and financial amounts

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

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

(a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;

(b) universities or non-profit research centres;

(c) institutional investors, including regional development funds;

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

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

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

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

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

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

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

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

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

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

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

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

#### Article 4

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

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis, taking into account the ownership structure and existing links as they are at the time of the granting of aid. 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. In order to prevent that mere temporary fluctuations of headcount and financial indicators lead to a temporary loss or acquisition of the SME status, 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 EXEMPTED UNDER THE CONDITIONS OF THIS REGULATION

#### PART I

to be provided through the established Commission IT application as set out in Article 11

<b>Aid reference</b>	<i>(to be completed by the Commission )</i>	
<b>Member State</b>	..... .....	
<b>Member State reference number</b>	..... .....	
<b>Region</b>	<b>Name of the Region(s) (NUTS<sup>65</sup>)</b> ..... .....	<b>Regional aid status<sup>66</sup></b> ..... .. ..... ..
<b>Granting authority</b>	<b>Name</b>	..... ..
	<b>Postal address</b>	..... ...
	<b>Web address</b>	..... ...
<b>Title of the aid measure</b>	..... .....	
<b>National legal basis (Reference to the relevant national official publication)</b>	..... ..... ..... .....	

<sup>65</sup> NUTS - Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.

<sup>66</sup> 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').

	.....	
<b>Web link to the full text of the aid measure</b>	.....	
<b>Type of measure</b>	<input type="checkbox"/> <b>Scheme</b>	
	<input type="checkbox"/> <b>Ad hoc aid</b>	<b>Name of the beneficiary and the group<sup>67</sup> it belongs to</b> ..... .....
<b>Amendment of an existing aid scheme or ad hoc aid</b>	<b>Commission aid reference</b>	
	<input type="checkbox"/> <b>Prolongation</b>	..... .....
	<input type="checkbox"/> <b>Modification</b>	..... .....
<b>Duration<sup>68</sup></b>	<input type="checkbox"/> <b>Scheme</b>	dd/mm/yyyy to dd/mm/yyyy
<b>Date of granting<sup>69</sup></b>	<input type="checkbox"/> <b>Ad hoc aid</b>	dd/mm/yyyy
<b>Economic sector(s) concerned</b>	<input type="checkbox"/> <b>All economic sectors eligible to receive aid</b>	
	<input type="checkbox"/> <b>Limited to certain sectors: Please specify at NACE group level<sup>70</sup></b>	..... .....
<b>Type of beneficiary</b>	<input type="checkbox"/> <b>SME</b>	
	<input type="checkbox"/> <b>Large undertakings</b>	
<b>Estimated number of beneficiaries:</b>	<input type="checkbox"/> under 10 <input type="checkbox"/> from 11 to 50 <input type="checkbox"/> from 51 to 100 <input type="checkbox"/> from 101 to 500 <input type="checkbox"/> from 501 to 1000	

<sup>67</sup> 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.

<sup>68</sup> Period during which the granting authority can commit itself to grant the aid.

<sup>69</sup> Determined in line with Article 2, point 27 of the Regulation.

<sup>70</sup> NACE Rev. 2 - Statistical classification of Economic Activities in the European Community. Typically, the sector shall be specified at group level.

	<input type="checkbox"/> over 1000	
<b>Budget</b>	<b>Total annual amount of the budget planned under the scheme<sup>71</sup></b>	<b>National currency (full amounts)</b> .....
	<b>Overall amount of the <i>ad hoc</i> aid awarded to the undertaking<sup>72</sup></b>	<b>National currency (full amounts)</b> .....
	<input type="checkbox"/> <b>For guarantees<sup>73</sup></b>	<b>National currency (full amounts)</b> .....
<b>Aid instrument</b>	<input type="checkbox"/> <b>Grant/Interest rate subsidy</b>	
	<input type="checkbox"/> <b>Loan/Repayable advances</b>	
	<input type="checkbox"/> <b>Guarantee (where appropriate with a reference to the Commission decision<sup>74</sup>)</b>	
	<input type="checkbox"/> <b>Tax advantage or tax exemption</b>	
	<input type="checkbox"/> <b>Provision of risk finance</b>	
	<input type="checkbox"/> <b>Other (please specify)</b> ..... <b>Indicate to which broad category below it would fit best in terms of its effect/function:</b> <input type="checkbox"/> <b>Grant</b> <input type="checkbox"/> <b>Loan</b> <input type="checkbox"/> <b>Guarantee</b> <input type="checkbox"/> <b>Tax advantage</b> <input type="checkbox"/> <b>Provision of risk finance</b>	
<input type="checkbox"/> <b>If co-financed by EU fund(s)</b>	<b>Name of EU fund(s):</b> ..... .....	<b>Amount of funding (as per EU fund) (National currency (full amounts))</b> ..... .....

PART II

<sup>71</sup> 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.

<sup>72</sup> In case of an *ad hoc* aid award: Indicate the overall aid amount/tax loss.

<sup>73</sup> For guarantees, indicate the (maximum) amount of loans guaranteed.

<sup>74</sup> 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.

to be provided through the established Commission electronic notification system as set out in Article 11. Please indicate under which provision of the GBER the aid measure is implemented.

<b>Primary Objective - General Objectives (list)</b>	<b>Objectives (list)</b>	<b>Maximum aid intensity in %  or Maximum annual aid amount in national currency (in full amounts)</b>	<b>SME – bonuses (if applicable)  in %</b>
...	...	...	...

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### ANNEX III

Provisions for the publication of information as set out in Article 9(1)

Member States shall organise their comprehensive State aid websites, on which the information set out 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 set out in Article 9(1)(c) shall be published:

- Name of the beneficiary<sup>75</sup>
- Beneficiary's identifier
- Size of enterprise (SME/large enterprise) at the time of granting
- Region in which the beneficiary is located, at NUTS (Nomenclature of Territorial Units for Statistics) level 2

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<sup>75</sup> As regards risk finance aid, the beneficiary is the final beneficiary, not the investor i.e. not the financial intermediary or the natural person carrying out the investment.

- Sector of activity at NACE group level
  - Aid amount in national currency<sup>76</sup>
  - Aid instrument<sup>77</sup> (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
  - If applicable, name of the entrusted entity, and the names of the selected financial intermediaries
  - Reference of the aid measure<sup>78</sup>.
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## ANNEX IV

### Definition of small mid-cap enterprises

#### 1. Enterprise

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes partnerships or associations regularly engaged in an economic activity.

#### 2. Staff headcount and financial ceilings

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<sup>76</sup> Gross grant equivalent unless this Regulation allows the use of nominal amounts. For operating aid, the annual amount of aid per beneficiary can be provided. For fiscal schemes and for schemes under Article 16 and Articles 24 to 28, this amount can be provided by the ranges set out in Article 9(2) of this Regulation.

<sup>77</sup> If the aid is granted through multiple aid instruments, the aid amount shall be provided for each instrument.

<sup>78</sup> As provided by the Commission under the electronic procedure referred to in Article 11 of this Regulation.

The category of small mid-cap enterprises is made up of enterprises which are not small and medium-sized enterprises in accordance with Annex I, employ fewer than 750 persons and have an annual turnover not exceeding EUR 150 million or an annual balance sheet total not exceeding EUR 129 million.

### 3. Types of enterprise taken into consideration in calculating staff headcount numbers and financial amounts

3.1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of point 3.2 or as a linked enterprise within the meaning of point 3.5.

3.2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of point 3.4 and where one enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of point 3.5, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

3.3. Except in the cases set out in point 3.4, an enterprise is not considered a small mid-cap enterprise if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

3.4. By way of derogation from point 3.2, an enterprise may be ranked as autonomous, and therefore as not having any partner enterprises, even if 25 % or more of its capital or voting rights are held by the following investors, if those investors are not linked, within the meaning of point 3.5, either individually or jointly to the enterprise in question:

(a) public investment corporations, venture capital or private equity funds, individuals or groups of individuals with a regular venture capital investment activity that invest equity capital in unquoted businesses ('business angels'), provided the total investment of those business angels in the same enterprise is less than EUR 5 000 000;

(b) universities or non-profit research centres;

(c) institutional investors, including regional development funds;

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

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

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

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

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

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

There is a presumption that no dominant influence exists if the investors referred to in point 3.4, are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders.

3.5.1. Enterprises having any of the relationships set out in point 3.5 above through one or more other enterprises, or any one of the investors mentioned in point 3.4, are also considered to be linked.

3.5.2. Enterprises which have one or other of the relationships set out in point 3.5 above 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. For the purposes of this point, ‘adjacent market’ means the market for a product or service situated directly upstream or downstream of the relevant market.

3.5.3. Where an alternative investment fund as defined in Article 4(1), point (a), of Directive 2011/61/EU<sup>79</sup> has invested into an enterprise, the following should not be considered ‘linked enterprises’ for the purposes of point 3.5.:

(a)that enterprise and that alternative investment fund;

(b)that enterprise and the manager of that alternative investment fund;

(c)that enterprise and another enterprise in which that alternative investment fund has invested.

The first subparagraph applies if all the following conditions are met:

(a)the alternative investment fund and its manager, and the enterprises concerned maintain separate accounting records;

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<sup>79</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1, ELI: <http://data.europa.eu/eli/dir/2011/61/oj>).

(b) the alternative investment fund and its manager have a pre-defined investment strategy to exit the enterprise or enterprises concerned, including by realising their value through the sale of the enterprise or other means.

3.6. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the ceilings set out in point 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.

#### 4. Data used for the staff headcount and the financial amounts and reference period

4.1. The data to apply to the staff headcount 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 and other indirect taxes.

4.2. 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 ceilings stated in point 2, this will not result in the loss or acquisition of the status of small mid-cap enterprise unless those ceilings are exceeded over two consecutive accounting periods.

4.3. 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 during the financial year.

#### 5. Staff headcount

5.1. The headcount corresponds to the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration ('annual work units'). 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 annual work units. The staff consists of the following:

(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.

5.2. 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.

## 6. Establishing the data of an enterprise

6.1. 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.

6.2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises as referred to in point 3 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 crossholdings, the greater percentage applies.

To the data referred to in the first and second subparagraph is 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.

6.3. For the application of point 6.2, 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 is 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 point 6.2, 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 that data is 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 point 6.2, second paragraph.

6.4. Where in the consolidated accounts no staff data appear for a given enterprise, these 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.