

Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance)

CHAPTER III

SPECIFIC PROVISIONS FOR DIFFERENT CATEGORIES OF AID

SECTION 1

Regional aid

Subsection A

Regional investment and operating aid

Article 13

Scope of regional aid

This Section shall not apply to:

- (a) aid which favours activities in the steel sector, the coal sector, the shipbuilding sector, the synthetic fibres sector, the transport sector as well as the related infrastructure, energy generation, distribution and infrastructure;
- (b) regional aid in the form of schemes which are targeted at a limited number of specific sectors of economic activity; schemes aimed at tourism activities, broadband infrastructures or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;
- (c) regional aid in the form of schemes which compensate the transport costs of goods produced in the outermost regions or in sparsely populated areas and granted in favour of:
 - (i) activities in the production, processing and marketing of products listed in Annex I to the Treaty; or
 - (ii) activities classified in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains⁽¹⁾ as agriculture, forestry and fishing under section A of the NACE Rev. 2 statistical classification of economic activities, mining and quarrying under section B of the NACE Rev. 2 and electricity, gas, steam and air conditioning supply under section D of the NACE Rev. 2; or
 - (iii) transport of goods by pipeline;

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- (d) individual regional investment aid to a beneficiary that has closed down the same or a similar activity in the European Economic Area in the two years preceding its application for regional investment aid or which, at the time of the aid application, has concrete plans to close down such an activity within a period of up to two years after the initial investment for which aid is requested is completed in the area concerned;
- (e) regional operating aid granted to undertakings whose principal activities fall under Section K 'Financial and insurance activities' of the NACE Rev. 2 or to undertakings that perform intra-group activities whose principal activities fall under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2.

Article 14

Regional investment aid

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

2 The aid shall be granted in assisted areas.

3 In assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty, the aid may be granted for an initial investment regardless of the size of the beneficiary. In assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, the aid may be granted to SMEs for any form of initial investment. Aid to large enterprises shall only be granted for an initial investment in favour of new economic activity in the area concerned.

4 The eligible costs shall be as follows:

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

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

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

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

In the case of acquisition of the assets of an establishment within the meaning of Article 2 point 49, only the costs of buying the assets from third parties unrelated to the

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

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

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

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

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

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

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

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

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

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

12 The aid intensity in gross grant equivalent shall not exceed the maximum aid intensity established in the regional aid map which is in force at the time the aid is granted in the area concerned. Where the aid intensity is calculated on the basis of paragraph 4(c), the maximum

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aid intensity shall not exceed the most favourable amount resulting from the application of that intensity on the basis of investment costs or wage costs. For large investment projects the aid amount shall not exceed the adjusted aid amount calculated in accordance with the mechanism defined in Article 2, point 20;

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

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

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

Article 15

Regional operating aid

1 Regional operating aid schemes in outermost regions and sparsely populated areas as designated by the Member States within their regional aid map approved by the Commission in accordance with paragraph 161 of the Guidelines on regional State aid for 2014-2020⁽²⁾ shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2 The regional operating aid schemes shall compensate for:

- a the additional transport costs of goods which have been produced in areas eligible for operating aid, as well as additional transport costs of goods that are further processed in these areas, under the following conditions:
 - (i) the beneficiaries have their production activity in those areas;
 - (ii) the aid is objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit;
 - (iii) these additional transport costs are calculated on the basis of the journey of the goods inside the national border of the Member State concerned using the means of transport which results in the lowest costs for the beneficiary. Only for outermost regions, additional transport costs of goods that are further processed in these areas may include the costs of transporting goods from any place of their production to these areas.

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

Subsection B

Urban development aid

Article 16

Regional urban development aid

- 1 Regional urban development aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
- 2 Urban development projects shall fulfil the following criteria:
- a they are implemented via urban development funds in assisted areas;
 - b they are co-financed by the European Structural and Investment Funds;
 - c they support the implementation of an ‘integrated sustainable urban development strategy’;
- 3 The total investment in an urban development project under any urban development aid measure shall not exceed EUR 20 million.
- 4 The eligible costs shall be the overall costs of the urban development project to the extent that they comply with Articles 65 and 37 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council⁽³⁾.
- 5 Aid granted by an urban development fund to the eligible urban development projects may take the form of equity, quasi-equity, loans, guarantees, or a mix thereof.
- 6 The urban development aid shall leverage additional investment from private investors at the level of the urban development funds or the urban development projects, so as to achieve an aggregate amount reaching minimum 30 % of the total financing provided to an urban development project.

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

8 The urban development measures shall fulfil the following conditions:

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

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

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

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

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

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

SECTION 2

Aid to SMEs

Article 17

Investment aid to SMEs

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

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

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

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

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

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

4 Intangible assets shall fulfil all of the following conditions:

- a they shall be used exclusively in the establishment receiving the aid;
- b they shall be regarded as amortizable assets;
- c they shall be purchased under market conditions from third parties unrelated to the buyer;
- d they shall be included in the assets of the undertaking for at least three years;

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5 Employment directly created by an investment project shall fulfil the following conditions:

- a it shall be created within three years of completion of the investment;
- b there shall be a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months;
- c it shall be maintained during a minimum period of three years from the date the post was first filled.

6 The aid intensity shall not exceed:

- a 20 % of the eligible costs in the case of small enterprises;
- b 10 % of the eligible costs in the case of medium-sized enterprises.

Article 18

Aid for consultancy in favour of SMEs

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

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

3 The eligible costs shall be the costs of consultancy services provided by external consultants.

4 The services concerned shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

Article 19

Aid to SMEs for participation in fairs

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

2 The eligible costs shall be the costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.

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

Article 20

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

1 Aid for cooperation costs incurred by SMEs participating in the European Territorial Cooperation projects covered by Regulation (EC) No 1299/2013 of the European Parliament and of the Council shall be compatible with the internal market within the meaning of Article

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107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

- 2 The eligible costs shall be the following:
 - a costs for organisational cooperation including the cost of staff and offices to the extent that it is linked to the cooperation project;
 - b costs of advisory and support services linked to cooperation and delivered by external consultants and service providers;
 - c travel expenses, costs of equipment and investment expenditure directly related to the project and depreciation of tools and equipment used directly for the project.
- 3 The services referred to in paragraph 2(b) shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or routine advertising.
- 4 The aid intensity shall not exceed 50 % of the eligible costs.

SECTION 3

Aid for access to finance for SMEs

Article 21

Risk finance aid

- 1 Risk finance aid schemes in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
- 2 At the level of financial intermediaries, risk finance aid to independent private investors may take one of the following forms:
 - a equity or quasi-equity, or financial endowment to provide risk finance investments directly or indirectly to eligible undertakings;
 - b loans to provide risk finance investments directly or indirectly to eligible undertakings;
 - c guarantees to cover losses from risk finance investments directly or indirectly to eligible undertakings.
- 3 At the level of independent private investors, risk finance aid may take the forms mentioned in paragraph 2 of this Article, or be in the form of tax incentives to private investors who are natural persons providing risk finance directly or indirectly to eligible undertakings.
- 4 At the level of eligible undertakings, risk finance aid may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof.
- 5 Eligible undertakings shall be undertakings which at the time of the initial risk finance investment are unlisted SMEs and fulfil at least one of the following conditions:
 - a they have not been operating in any market;
 - b they have been operating in any market for less than 7 years following their first commercial sale;

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- c they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50 % of their average annual turnover in the preceding 5 years.

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

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

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

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

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

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

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

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

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

13 A risk finance measure shall fulfil the following conditions:

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- a it shall be implemented via one or more financial intermediaries, except for tax incentives to private investors in respect of their direct investments into eligible undertakings;
 - b financial intermediaries, as well as investors or fund managers shall be selected through an open, transparent and non-discriminatory call which is made in accordance with applicable Union and national laws and aimed at establishing appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit sharing shall be given preference over downside protection;
 - c in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;
 - d in the case of guarantees falling under point 2(c), the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at a maximum of 25 % of the underlying guaranteed portfolio. Only guarantees covering expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.
- 14 Risk finance measures shall ensure profit-driven financing decisions. This is considered to be the case where all of the following conditions are fulfilled:
- a financial intermediaries shall be established according to the applicable laws.
 - b the Member State, or the entity entrusted with the implementation of the measure, shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the risk finance measure, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the relevant portfolio of investments;
 - c risk finance provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing *ex-ante* financial viability;
 - d a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.
- 15 Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled where the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following conditions:
- a they shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
 - b their remuneration shall conform to market practices. This requirement is presumed to be met where the manager or the financial intermediary is selected through an open, transparent and non-discriminatory selection call, based on objective criteria linked to experience, expertise and operational and financial capacity;
 - c they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
 - d they shall set out an investment strategy, criteria and the proposed timing of investments;
 - e investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.
- 16 A risk finance measure providing guarantees or loans to eligible undertakings, shall fulfil the following conditions:
- a as a result of the measure, the financial intermediary shall undertake investments that would not have been carried out or would have been carried out in a restricted or

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different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;

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

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

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

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

Article 22

Aid for start-ups

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

2 Eligible undertakings shall be unlisted small enterprises up to five years following their registration, which have not yet distributed profits and have not been formed through a merger. For eligible undertakings that are not subject to registration the five years eligibility period may be considered to start from the moment when the enterprise either starts its economic activity or is liable to tax for its economic activity.

3 Start-up aid shall take the form of:

- a loans with interest rates which are not conform with market conditions, with a duration of 10 years and up to a maximum nominal amount of EUR 1 million, or EUR 1,5 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR 2 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty. For loans with a duration comprised between 5 and 10 years the maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. For loans with a duration of less than 5 years, the maximum amount shall be the same as for loans with a duration of 5 years;

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

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

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

Article 23

Aid to alternative trading platforms specialised in SMEs

1 Aid in favour of alternative trading platforms specialised in SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2 Where the platform operator is a small enterprise, the aid measure may take the form of start-up aid to the platform operator, in which case the conditions laid down in Article 22 shall apply.

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

Article 24

Aid for scouting costs

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

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2 The eligible costs shall be the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings pursuant to Articles 21 and 22.

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

SECTION 4

Aid for research and development and innovation

Article 25

Aid for research and development projects

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 shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2 The aided 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.

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

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

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

5 The aid intensity for each beneficiary shall not exceed:

- a 100 % of the eligible costs for fundamental research;
- b 50 % of the eligible costs for industrial research;
- c 25 % of the eligible costs for experimental development;

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d 50 % of the eligible costs for feasibility studies.

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

a by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;

b by 15 percentage points if one of the following conditions is fulfilled:

(i) the project involves effective collaboration:

— between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or

— between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results;

(ii) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.

7 The aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;

Article 26

Investment aid for research infrastructures

1 Aid for the construction or upgrade of research infrastructures that perform economic activities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2 Where a research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.

3 The price charged for the operation or use of the infrastructure shall correspond to a market price.

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

5 The eligible costs shall be the investment costs in intangible and tangible assets.

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

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

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Article 27

Aid for innovation clusters

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

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

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

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

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

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

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

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

- a animation of the cluster to facilitate collaboration, information sharing and the provision or channelling of specialised and customised business support services;
- b marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;
- c management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.

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

Article 28

Innovation aid for SMEs

1 Innovation aid for SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement

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of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled:

- 2 The eligible costs shall be the following:
 - a costs for obtaining, validating and defending patents and other intangible assets;
 - b costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;
 - c costs for innovation advisory and support services;
- 3 The aid intensity shall not exceed 50 % of the eligible costs.
- 4 In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100 % of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200 000 per undertaking within any three year period.

Article 29

Aid for process and organisational innovation

- 1 Aid for process and organisational innovation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
- 2 Aid to large undertakings shall only be compatible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs.
- 3 The eligible costs shall be the following:
 - a personnel costs;
 - b costs of instruments, equipment, buildings and land to the extent and for the period used for the project;
 - c costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions;
 - d additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project.
- 4 The aid intensity shall not exceed 15 % of the eligible costs for large undertakings and 50 % of the eligible costs for SMEs.

Article 30

Aid for research and development in the fishery and aquaculture sector

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

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2 The aided project shall be of interest to all undertakings in the particular sector or sub-sector concerned.

3 Prior to the date of the start of the aided project the following information shall be published on the internet:

- a that the aided project will be carried out;
- b the goals of the aided project;
- c the approximate date for the publication of the results expected from the aided project and its place of publication on the internet;
- d a reference that the results of the aided project will be available to all undertakings active in the particular sector or sub-sector concerned at no cost.

4 The results of the aided project shall be made available on internet from the end date of the aided project or the date on which any information concerning those results is given to members of any particular organisation, whatever comes first. The results shall remain available on internet for a period of at least 5 years starting from the end date of the aided project.

5 Aid shall be granted directly to the research and knowledge-dissemination organisation and shall not involve the direct granting of non-research related aid to an undertaking producing, processing or marketing fishery or aquaculture products.

6 The eligible costs shall be those provided in Article 25(3).

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

SECTION 5

Training aid

Article 31

Training aid

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

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

3 The eligible costs shall be the following:

- a trainers' personnel costs, for the hours during which the trainers participate in the training;
- b trainers' and trainees' operating costs directly relating to the training project such as travel expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project. Accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities;
- c costs of advisory services linked to the training project;
- d trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.

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

- a by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;
- b by 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small enterprises.

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

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

SECTION 6

Aid for disadvantaged workers and for workers with disabilities

Article 32

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

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

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

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

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

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

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

Article 33

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

1 Aid for the employment of workers with disabilities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from

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the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2 Eligible costs shall be the wage costs over any given period during which the worker with disabilities is employed.

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

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

5 The aid intensity shall not exceed 75 % of the eligible costs.

Article 34

Aid for compensating the additional costs of employing workers with disabilities

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

2 The eligible costs shall be the following:

- a costs of adapting the premises;
- b costs of employing staff solely for time spent on the assistance of the workers with disabilities and of training such staff to assist workers with disabilities;
- c costs of adapting or acquiring equipment, or acquiring and validating software for use by workers with disabilities, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not workers with disabilities;
- d costs directly linked to transport of workers with disabilities to the working place and for work related activities;
- e wage costs for the hours spent by a worker with disabilities on rehabilitation;
- f where the beneficiary provides sheltered employment, the costs of constructing, installing or modernising the production units of the undertaking concerned, and any costs of administration and transport, provided that such costs result directly from the employment of workers with disabilities.

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

Article 35

Aid for compensating the costs of assistance provided to disadvantaged workers

1 Aid for compensating the costs of assistance provided to disadvantaged workers shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and

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shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

- 2 The eligible costs shall be the costs of:
 - a employing staff solely for time spent on the assistance of the disadvantaged workers over a maximum period of 12 months following recruitment of a disadvantaged worker or over a maximum period of 24 months following recruitment of a severely disadvantaged worker;
 - b of training such staff to assist disadvantaged workers.
- 3 The assistance provided shall consist of measures to support the disadvantaged worker's autonomy and adaptation to the work environment, in accompanying the worker in social and administrative procedures, facilitation of communication with the entrepreneur and managing conflicts.
- 4 The aid intensity shall not exceed 50 % of the eligible costs.

SECTION 7

Aid for environmental protection

Article 36

Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards

- 1 Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
- 2 The investment shall fulfil one of the following conditions:
 - a it shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
 - b it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.
- 3 Aid shall not be granted where investments are undertaken to ensure that undertakings comply with Union standards already adopted and not yet in force.
- 4 By way of derogation from paragraph 3, aid may be granted for
 - a the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Union standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date.
 - b retrofitting of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the Union standards were not yet in force at the date

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of entry into operation of those vehicles and that, once mandatory, they do not apply retroactively to those vehicles.

5 The eligible costs shall be the extra investment costs necessary to go beyond the applicable Union standards or to increase the level of environmental protection in the absence of Union standards. They shall be determined as follows:

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

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

6 The aid intensity shall not exceed 40 % of the eligible costs.

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

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

Article 37

Investment aid for early adaptation to future Union standards

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

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

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

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

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

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- 4 The aid intensity shall not exceed the following:
- a 20 % of the eligible costs for small undertakings, 15 % of the eligible costs for medium-sized undertakings and 10 % of the eligible costs for large undertakings if the implementation and finalisation of the investment take place more than three years before the date of entry into force of the new Union standard;
 - b 15 % of the eligible costs for small undertakings, 10 % of the eligible costs for medium-sized undertakings and 5 % of the eligible costs for large undertakings if the implementation and finalisation of the investment take place between one and three years before the date of entry into force of the new Union standard.
- 5 The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Article 38

Investment aid for energy efficiency measures

- 1 Investment aid enabling undertakings to achieve energy efficiency shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
- 2 Aid shall not be granted under this Article where improvements are undertaken to ensure that undertakings comply with Union standards already adopted, even if they are not yet in force.
- 3 The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined as follows:
- a where the costs of investing in energy efficiency can be identified in the total investment cost as a separate investment, this energy efficiency-related cost shall constitute the eligible costs;
 - b in all other cases, the costs of investing in energy efficiency are identified by reference to a similar, less energy efficient investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitutes the eligible costs.

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

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

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Article 39

Investment aid for energy efficiency projects in buildings

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

2 Eligible for aid under the present Article are energy efficiency projects relating to buildings.

3 The eligible costs shall be the overall costs of the energy efficiency project.

4 The aid shall be granted in the form of an endowment, equity, a guarantee or loan to an energy efficiency fund or other financial intermediary, which shall fully pass it on to the final beneficiaries being the building owners or tenants.

5 The aid granted by the energy efficiency fund or other financial intermediary to the eligible energy efficiency projects may take the form of loans or guarantees. The nominal value of the loan or the amount guaranteed shall not exceed EUR 10 million per project at the level of the final beneficiaries. The guarantee should not exceed 80 % of the underlying loan.

6 The repayment by the building owners to the energy efficiency fund or other financial intermediary shall not be less than the nominal value of the loan.

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

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

- a Financial intermediary managers, as well as energy efficiency fund managers shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws. In particular, there shall be no discrimination on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries and energy efficiency fund managers may be required to fulfil predefined criteria objectively justified by the nature of the investments;
- b The independent private investors shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws aimed at establishing the appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit-sharing shall be given preference over downside protection. If the private investors are not selected by such a call, the fair rate of return to the private investors shall be established by an independent expert selected via an open, transparent and non-discriminatory call;
- c In the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;
- d In the case of guarantees, the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at 25 % of the underlying guaranteed

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- portfolio. Only guarantees covering the expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium;
- e The investors shall be allowed to be represented in the governance bodies of the energy efficiency fund or financial intermediary, such as the supervisory board or the advisory committee;
 - f The energy efficiency fund or financial intermediary shall be established according to the applicable laws and the Member State shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the energy efficiency aid measure.
- 9 Financial intermediaries, including energy efficiency funds shall be managed on a commercial basis and shall ensure profit-driven financing decisions. This is considered to be the case when the financial intermediary and, as the case may be, the managers of the energy efficiency fund fulfil the following conditions:
- a they are obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
 - b their remuneration conforms with market practices. This requirement is considered to be met where the manager is selected through an open, transparent and non-discriminatory call, based on objective criteria linked to experience, expertise and operational and financial capacity;
 - c they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
 - d they shall set out an investment strategy, criteria and the proposed timing of investments in energy efficiency projects, establishing the *ex-ante* financial viability and their expected impact on energy efficiency.
 - e a clear and realistic exit strategy shall exist for the public funds invested in the energy efficiency fund or granted to the financial intermediary, allowing the market to finance energy efficiency projects when the market is ready to do so.
- 10 Energy efficiency improvements undertaken to ensure that the beneficiary complies with Union standards which have already been adopted shall not be exempted from the notification requirement under this Article.

Article 40

Investment aid for high-efficiency cogeneration

- 1 Investment aid for high-efficiency cogeneration shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
- 2 The investment aid shall be granted in respect of newly installed or refurbished capacities only.
- 3 The new cogeneration unit shall provide overall primary energy savings compared to separate production of heat and electricity as provided for by Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending

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Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC⁽⁴⁾. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.

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

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

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

Article 41

Investment aid for the promotion of energy from renewable sources

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

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

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

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

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

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

- a where the costs of investing in the production of energy from renewable sources can be identified in the total investment cost as a separate investment, for instance as a readily identifiable add-on component to a pre-existing facility, this renewable energy-related cost shall constitute the eligible costs;
- b where the costs of investing in the production of energy from renewable sources can be identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid, this difference between the costs of both investments identifies the renewable energy-related cost and constitutes the eligible costs;

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- c for certain small installations where a less environmentally friendly investment cannot be established as plants of a limited size do not exist, the total investment costs to achieve a higher level of environmental protection shall constitute the eligible costs.

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

- 7 The aid intensity shall not exceed:
- a 45 % of the eligible costs if the eligible costs are calculated on the basis of point (6) (a) or point (6)(b);
 - b 30 % of the eligible cost if the eligible costs are calculated on the basis of point point (6)(c).

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

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

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

Article 42

Operating aid for the promotion of electricity from renewable sources

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

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

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

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

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

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

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

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

7 Aid shall not be granted when prices are negative.

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

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

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

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

Article 43

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

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

2 Aid shall only be granted to installations with an installed capacity of less than 500 kW for the production of energy from all renewable sources except for wind energy, for which aid shall be granted to installations with an installed capacity of less than 3 MW or with less

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than 3 generation units and for biofuels, for which aid shall be granted to installations with an installed capacity of less than 50 000 tonnes/year. For the purpose of calculating those maximum capacities, small scale installations with a common connection point to the electricity grid shall be considered as one installation.

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

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

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

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

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

Article 44

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

1 Aid schemes in the form of reductions in environmental taxes fulfilling the conditions of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁽⁵⁾ shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2 The beneficiaries of the tax reduction shall be selected on the basis of transparent and objective criteria and shall pay at least the respective minimum level of taxation set by Directive 2003/96/EC.

3 Aid schemes in the form of tax reductions shall be based on a reduction of the applicable environmental tax rate or on the payment of a fixed compensation amount or on a combination of these mechanisms.

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

Article 45

Investment aid for remediation of contaminated sites

1 Investment aid to undertakings repairing environmental damage by remediating contaminated sites shall be compatible with the internal market within the meaning of Article

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107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2 The investment shall lead to the repair of the environmental damage, including damage to the quality of the soil or of surface water or groundwater.

3 Where the legal or physical person liable for the environmental damage under the law applicable in each Member State without prejudice to the Union rules in this matter — in particular Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage⁽⁶⁾ as amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries⁽⁷⁾, 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⁽⁸⁾ and Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC⁽⁹⁾ — is identified, that person must finance the remediation in accordance with the ‘polluter pays’ principle, and no State aid shall be granted. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, the person responsible for the remediation or decontamination work may receive State aid.

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

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

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

Article 46

Investment aid for energy efficient district heating and cooling

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

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

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

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

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5 The eligible costs for the distribution network shall be the investment costs.

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

Article 47

Investment aid for waste recycling and re-utilisation

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

2 The investment aid shall be granted for the recycling and re-utilisation of waste generated by other undertakings.

3 The recycled or re-used materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner. Aid to waste recovery operations other than recycling shall not be block exempted under this Article.

4 The aid shall not indirectly relieve the polluters from a burden that should be borne by them under Union law, or from a burden that should be considered a normal company cost.

5 The investment shall not merely increase demand for the materials to be recycled without increasing collection of those materials.

6 The investment shall go beyond the state of the art.

7 The eligible costs shall be the extra investment costs necessary to realise an investment leading to better or more efficient recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence the aid.

8 The aid intensity shall not exceed 35 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

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

10 Aid for investments relating to the recycling and re-utilisation of the beneficiary's own waste shall not be exempt from the notification requirement under this Article.

Article 48

Investment aid for energy infrastructure

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

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- 2 Aid shall be granted for energy infrastructure located in assisted areas.
- 3 The energy infrastructure shall be subject to full tariff and access regulation according to internal energy market legislation.
- 4 The eligible costs shall be the investment costs.
- 5 The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante* or through a claw-back mechanism.
- 6 Aid for investments in electricity and gas storage projects and oil infrastructure shall not be exempt from the notification requirement under this Article.

Article 49

Aid for environmental studies

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

SECTION 8

Aid to make good the damage caused by certain natural disasters

Article 50

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

- 1 Aid schemes to make good the damage caused by earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin shall be compatible with the internal market within the meaning of Article 107(2)(b) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
- 2 Aid shall be granted subject to the following conditions:
 - a the competent public authorities of a Member State have formally recognised the character of the event as a natural disaster; and

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- b there is a direct causal link between the natural disaster and the damages suffered by the affected undertaking.

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

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

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

SECTION 9

Social aid for transport for residents of remote regions

Article 51

Social aid for transport for residents of remote regions

1 Aid for air and maritime passenger transport shall be compatible with the internal market pursuant to Article 107(2)(a) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2 The entire aid shall be for the benefit of final consumers who have their normal residence in remote regions.

3 The aid shall be granted for passenger transport on a route linking an airport or port in a remote region with another airport or port within the European Economic Area.

4 The aid shall be granted without discrimination as to the identity of the carrier or type of service and without limitation as to the precise route to or from the remote region.

5 The eligible costs shall be the price of a return ticket from or to the remote region, including all taxes and charges invoiced by the carrier to the consumer.

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

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SECTION 10

Aid for broadband infrastructures

Article 52

Aid for broadband infrastructures

1 Investment aid for broadband network development shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2 The eligible costs shall be the following:

- a investment costs for the deployment of a passive broadband infrastructure;
- b investment costs of broadband-related civil engineering works;
- c investment costs for the deployment of basic broadband networks; and
- d investment costs for the deployment of next generation access (NGA) networks.

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

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

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

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

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

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SECTION 11

Aid for culture and heritage conservation

Article 53

Aid for culture and heritage conservation

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

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

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

3 The aid may take the form of:

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

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

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

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- e costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project;
- 5 For operating aid, the eligible costs shall be the following:
- a the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;
 - b costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
 - c costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities;
 - d operating costs directly relating to the cultural project or activity, such as rent or lease of real estate and cultural venues, travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan, lease and depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity; depreciation charges and the costs of financing are only eligible if they have not been covered by investment aid;
 - e costs for personnel working for the cultural institution or heritage site or for a project;
 - f costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.
- 6 For investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism. The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period.
- 7 For operating aid, the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
- 8 For aid not exceeding EUR 1 million, the maximum amount of aid may be set, alternatively to the method referred to in paragraphs 6 and 7, at 80 % of eligible costs.
- 9 For publishing of music and literature as defined in paragraph 2(f), the maximum aid amount shall not exceed either the difference between the eligible costs and the project's discounted revenues or 70 % of the eligible costs. The revenues shall be deducted from the eligible costs *ex ante* or through a clawback mechanism. The eligible costs shall be the costs for publishing of music and literature, including the authors' fees (copyright costs), translators' fees, editors' fees, other editorial costs (proofreading, correcting, reviewing), layout and pre-press costs and printing or e-publication costs.
- 10 Aid to press and magazines, whether they are published in print or electronically, shall not be eligible under this Article.

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Article 54

Aid schemes for audiovisual works

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

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

3 Aid may take the form of:

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

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

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

In both cases, if a Member States requires a minimum level of production activity in the territory concerned for projects to be eligible for aid, that level shall not exceed 50 % of the overall production budget. In addition, the maximum expenditure subject to territorial spending obligations shall in no case exceed 80 % of the overall production budget.

5 The eligible costs shall be the following:

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

6 The aid intensity for the production of audiovisual works shall not exceed 50 % of the eligible costs.

7 The aid intensity may be increased as follows:

- a to 60 % of the eligible costs for cross-border productions funded by more than one Member State and involving producers from more than one Member State;
- b to 100 % of the eligible costs for difficult audiovisual works and co-productions involving countries from the Development Assistance Committee (DAC) List of the OECD.

8 The aid intensity for pre-production shall not exceed 100 % of the eligible costs. If the resulting script or project is made into an audiovisual work such as a film, the pre-production

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costs shall be incorporated in the overall budget and taken into account when calculating the aid intensity. The aid intensity for distribution shall be the same as the aid intensity for production.

9 Aid shall not be reserved for specific production activities or individual parts of the production value chain. Aid for film studio infrastructures shall not be eligible under this Article.

10 Aid shall not be reserved exclusively for nationals and beneficiaries shall not be required to have the status of undertaking established under national commercial law.

SECTION 12

Aid for sport and multifunctional recreational infrastructures

Article 55

Aid for sport and multifunctional recreational infrastructures

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

2 Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20 % of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.

3 Multifunctional recreational infrastructure shall consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.

4 Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.

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

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

7 The aid may take the form of:

- a investment aid, including aid for the construction or upgrade of sport and multifunctional recreational infrastructure;
- b operating aid for sport infrastructure;

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

9 For operating aid for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such

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as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid.

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

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

12 For aid not exceeding EUR 1 million, the maximum amount of aid may be set, alternatively to the method referred to in paragraphs 10 and 11, at 80 % of eligible costs.

SECTION 13

Aid for local infrastructures

Article 56

Investment aid for local infrastructures

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

2 This Article shall not apply to aid for infrastructures that is covered by other sections of Chapter III of this Regulation with the exception of Section 1 — Regional aid. This Article shall also not apply to airport infrastructure and port infrastructure.

3 The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall correspond to market price.

4 Any concession or other entrustment to a third party to operate the infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

5 The eligible costs shall be the investment costs in tangible and intangible assets.

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

7 Dedicated infrastructure shall not be exempted under this Article.

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- (1) [OJ L 393, 30.12.2006, p. 1.](#)
- (2) [OJ C 209, 23.7.2013, p. 1.](#)
- (3) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ([OJ L 347, 20.12.2013, p. 320](#)).
- (4) [OJ L 315, 14.11.2012, p. 1.](#)
- (5) [OJ L 283, 31.10.2003, p. 51.](#)
- (6) [OJ L 143, 30.4.2004, p. 56.](#)
- (7) [OJ L 102, 11.4.2006, p. 1.](#)
- (8) [OJ L 140, 5.6.2009, p. 114.](#)
- (9) [OJ L 178, 28.6.2013, p. 66.](#)

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