

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<sup>(1)</sup> as agriculture, forestry and fishing under section A of the NACE Rev. 2 statistical classification of economic activities, mining and quarrying under section B of the NACE Rev. 2 and electricity, gas, steam and air conditioning supply under section D of the NACE Rev. 2; or
  - (iii) transport of goods by pipeline;

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

#### *Article 14*

### **Regional investment aid**

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

2 The aid shall be granted in assisted areas.

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

4 The eligible costs shall be as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>(2)</sup> 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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*Status: This is the original version (as it was originally adopted).*

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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<sup>(3)</sup>.
- 5 Aid granted by an urban development fund to the eligible urban development projects may take the form of equity, quasi-equity, loans, guarantees, or a mix thereof.
- 6 The urban development aid shall leverage additional investment from private investors at the level of the urban development funds or the urban development projects, so as to achieve an aggregate amount reaching minimum 30 % of the total financing provided to an urban development project.

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

8 The urban development measures shall fulfil the following conditions:

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

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

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

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

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

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

- (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](#)).