

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.

- 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.

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**Status:** This is the original version (as it was originally adopted).

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- (1) OJ L 393, 30.12.2006, p. 1.
- (2) OJ C 209, 23.7.2013, p. 1.