

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 7

#### *Aid for environmental protection*

#### *Article 36*

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

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

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

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

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

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

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

#### *Article 37*

### **Investment aid for early adaptation to future Union standards**

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

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

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

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

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

4 The aid intensity shall not exceed the following:

- a 20 % of the eligible costs for small undertakings, 15 % of the eligible costs for medium-sized undertakings and 10 % of the eligible costs for large undertakings if the implementation and finalisation of the investment take place more than three years before the date of entry into force of the new Union standard;

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- b 15 % of the eligible costs for small undertakings, 10 % of the eligible costs for medium-sized undertakings and 5 % of the eligible costs for large undertakings if the implementation and finalisation of the investment take place between one and three years before the date of entry into force of the new Union standard.

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

### *Article 38*

#### **Investment aid for energy efficiency measures**

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

2 Aid shall not be granted under this Article where improvements are undertaken to ensure that undertakings comply with Union standards already adopted, even if they are not yet in force.

3 The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined as follows:

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

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

4 The aid intensity shall not exceed 30 % of the eligible costs.

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

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

### *Article 39*

#### **Investment aid for energy efficiency projects in buildings**

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

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

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

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

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

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

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

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

- a Financial intermediary managers, as well as energy efficiency fund managers shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws. In particular, there shall be no discrimination on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries and energy efficiency fund managers may be required to fulfil predefined criteria objectively justified by the nature of the investments;
- b The independent private investors shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws aimed at establishing the appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit-sharing shall be given preference over downside protection. If the private investors are not selected by such a call, the fair rate of return to the private investors shall be established by an independent expert selected via an open, transparent and non-discriminatory call;
- c In the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;
- d In the case of guarantees, the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at 25 % of the underlying guaranteed portfolio. Only guarantees covering the expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium;
- e The investors shall be allowed to be represented in the governance bodies of the energy efficiency fund or financial intermediary, such as the supervisory board or the advisory committee;
- f The energy efficiency fund or financial intermediary shall be established according to the applicable laws and the Member State shall provide for a due diligence process

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in order to ensure a commercially sound investment strategy for the purpose of implementing the energy efficiency aid measure.

9 Financial intermediaries, including energy efficiency funds shall be managed on a commercial basis and shall ensure profit-driven financing decisions. This is considered to be the case when the financial intermediary and, as the case may be, the managers of the energy efficiency fund fulfil the following conditions:

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

10 Energy efficiency improvements undertaken to ensure that the beneficiary complies with Union standards which have already been adopted shall not be exempted from the notification requirement under this Article.

#### *Article 40*

### **Investment aid for high-efficiency cogeneration**

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

2 The investment aid shall be granted in respect of newly installed or refurbished capacities only.

3 The new cogeneration unit shall provide overall primary energy savings compared to separate production of heat and electricity as provided for by Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC<sup>(1)</sup>. 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.

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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;
- 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);

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b 30 % of the eligible cost if the eligible costs are calculated on the basis of point (6)(c).

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

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

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

#### *Article 42*

### **Operating aid for the promotion of electricity from renewable sources**

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

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

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

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

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

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

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

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

7 Aid shall not be granted when prices are negative.

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

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

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

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

#### *Article 43*

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

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

2 Aid shall only be granted to installations with an installed capacity of less than 500 kW for the production of energy from all renewable sources except for wind energy, for which aid shall be granted to installations with an installed capacity of less than 3 MW or with less than 3 generation units and for biofuels, for which aid shall be granted to installations with an installed capacity of less than 50 000 tonnes/year. For the purpose of calculating those maximum capacities, small scale installations with a common connection point to the electricity grid shall be considered as one installation.

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

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



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

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

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

#### *Article 45*

### **Investment aid for remediation of contaminated sites**

1 Investment aid to undertakings repairing environmental damage by remediating contaminated sites shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

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

3 Where the legal or physical person liable for the environmental damage under the law applicable in each Member State without prejudice to the Union rules in this matter — in particular Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage<sup>(3)</sup> 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<sup>(4)</sup>, Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of

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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<sup>(5)</sup> 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<sup>(6)</sup> — 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.

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.

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## 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.

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.

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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.

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- (1) OJ L 315, 14.11.2012, p. 1.
- (2) OJ L 283, 31.10.2003, p. 51.
- (3) OJ L 143, 30.4.2004, p. 56.
- (4) OJ L 102, 11.4.2006, p. 1.
- (5) OJ L 140, 5.6.2009, p. 114.
- (6) OJ L 178, 28.6.2013, p. 66.

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