

Sayı: 70430465-TİM.OAİB.GSK.İDARİ.2023/990-3102 **Ankara, 20/03/2023**
Konu: YEŞİL MUTABAKAT SANAYİ PLANI KAPSAMINDA AB DEVLET
YARDIMLARI MEVZUATINDA

SİRKÜLER (G-2023)

Sayın Üyemiz,

Ticaret Bakanlığı Uluslararası Anlaşmalar ve Avrupa Birliği Genel Müdürlüğü tarafından Türkiye İhracatçıları Meclisi (TİM)'e iletilen bir yazıda konusu, Avrupa Komisyonu tarafından, “Yeşil Mutabakat Sanayi Planı” kapsamında yeşil ekonomiye geçişte kilit öneme sahip sektörleri desteklemek üzere 9 Mart 2023 tarihinde “Geçici Kriz ve Geçiş Çerçevesinin” kabul edildiği belirtilmektedir.

Bir örneği Ek-1’de yer alan Komisyon Bildirimi incelendiğinde görüleceği üzere; Rusya’nın Ukrayna’yı işgali kapsamında üye ülkelerin ekonomilerini desteklemelerini teminen 23 Mart 2022 tarihinde kabul edilen Devlet Yardımları Geçici Kriz Çerçevesi’nin, AB firmalarının finansman erişiminin hızlandırılması amacıyla “Geçici Kriz ve Geçiş Çerçevesi”ne dönüştürülerek, kapsamı genişletilmekte ve uygulama süresi uzatılmaktadır. Söz konusu değişiklik kapsamında Komisyon tarafından yapılan açıklamada (Ek-2);

- Yeni devlet yardımları mevzuatının üye ülkeler tarafından yenilenebilir enerji ve enerji depolamanın yaygınlaştırılması ve sanayi üretim süreçlerinin karbondan arındırılmasına yönelik 31 Aralık 2025 tarihine kadar oluşturulacak planları kapsadığı;

- Bu alanlarda verilecek devlet yardımlarının daha etkin hale getirilmesi amacıyla; küçük projeler ve henüz tam olgunlaşmamış teknolojilere verilecek yardımlar için koşulların basitleştirildiği; her türlü yenilenebilir enerji kaynağının yayılımını desteklemek üzere destek olanaklarının genişletildiği; hidrojen türevi yakıtlara geçiş yapan sanayi süreçlerinin karbondan arındırılmasına yönelik destek imkanlarının artırıldığı; daha yüksek yardım tavanları ve basitleştirilmiş hesaplama yöntemleri geliştirildiği;

- Net sıfır ekonomiye geçiş için kilit sektörlerdeki yatırımların daha da hızlandırılması için, piller, güneş panelleri, rüzgar türbinleri, ısı pompaları gibi stratejik ekipmanlar ile bunların temel bileşenlerinin üretimi ve kritik hammaddelerin üretimi ve geri dönüşümüne yönelik yatırım desteği sağlanacağı;

- Üye ülkelerin, istisnai durumlarda, yatırımların Avrupa Ekonomik Alanı’ndan (AEA) başka bir yere yönlendirilmesi riski olması halinde, şirketlere daha yüksek destekler sağlayabileceği; bu durumda, üye ülkelerin, yararlanıcı firmanın üçüncü bir ülkede alabileceği destek tutarını ya da firmayı AEA içerisinde yatırım yapmaya teşvik edecek tutarı devlet yardımı olarak verebileceği; ancak söz konusu seçeneğin çok sayıda önleme tabi olduğu; bu kapsamda yatırımların bölgesel yardım haritası ile belirlenen alanda gerçekleştirilmesi, yararlanıcı firmanın çevresel emisyonlar açısından en son üretim teknolojisini kullanması ve verilecek yardımın üye ülkeler arasında yatırımların yer değiştirmesine neden olmaması gerektiği belirtilmiştir. Öte yandan, yine 9 Mart 2023 tarihinde, üye ülkeler tarafından ön bildirim yapılmaksızın veya Komisyon onayı olmaksızın devlet yardımı verilebilmesine olanak sağlayan Genel Blok Muafiyet Tüzüğü’nün yeşil ve dijital dönüşüm hedefleri çerçevesinde gözden geçirilmesine yönelik mevzuat değişikliğinin Komisyon tarafından kabul edildiği iletilmiştir.

Bir örneği Ek-3’de sunulan Genel Blok Muafiyet Tüzüğü (GBER - General Block Exemption Regulation) hakkında Komisyon Bildirimi, yeni Geçici Kriz ve Geçiş Çerçevesi ile birbirini tamamlayacak şekilde, üye ülkelerin Yeşil Mutabakat Sanayi Planı doğrultusunda kilit sektörlerle

Ayrıntılı bilgi için: Fahriye Serinova -

Orta Anadolu İhracatçı Birlikleri Genel Sekreterliği

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gerekli desteği vermesini kolaylaştırmayı amaçlamaktadır. Konuya ilişkin olarak Komisyon tarafından yapılan açıklamada (Ek-4);

- Yeşil ve dijital dönüşüm, Rusya'nın Ukrayna'yı işgali, koronavirüs pandemisi ve yüksek enerji fiyatları kapsamında çeşitli devlet yardımları rehberlerinde gerçekleştirilen değişikliklerin Genel Blok Muafiyet Tüzüğü'ne yansıtılmasının amaçlandığı;

- Söz konusu değişikliklerin, üye ülkelerin iklim nötr ve net sıfır ekonomiye geçiş için kilit öneme sahip sektörlerde devlet yardımı planlarını daha esnek bir şekilde tasarlaması ve uygulamasına olanak sağlayacağı ve ayrıca Yeşil Mutabakat Sanayi Planı ile uyumlu olarak Avrupa'da temiz teknoloji üretimi için yatırım ve finansmanın hızlandırılmasına yardımcı olacağı;

- Değişiklik ile, yenilenebilir enerjinin, karbondan arındırma projelerinin, yeşil hareketliliğin, biyoçeşitliliğin, enerji verimliliğinin ve yenilenebilir hidrojene yatırım imkanlarının desteklenmesi için çevrenin korunması ve enerji alanında devlet yardımı olanaklarının artırılacağı ve kolaylaştırılacağı;

- AB'nin Ortak Çıkarına Hizmet Eden Önemli Projeler (IPCEI – Important Projects of Common European Interest) gibi birden çok AB ülkesinden yararlanıcıların dahil olduğu araştırma ve geliştirme projelerinin, yardım yoğunlukları ve bildirim eşik değerleri artırılarak uygulanmasının kolaylaştırılacağı;

- Araştırma, Geliştirme ve Yenilik (RDI - Research, Development and Innovation) yardımlarının yanı sıra, çevresel yardım alanında bildirim eşiklerinin önemli ölçüde artırılacağı; • Küçük ve orta ölçekli işletmeler ve yeni kurulan şirketler için risk finansmanı yardımı olasılıklarını netleştirilerek kolaylaştırılacağı;

- Genel Blok Muafiyet Tüzüğü'nün yasal kesinlik ve düzenleyici çerçevede istikrar için 2026 yılının sonuna kadar uzatılacağı;

- GBER'in devlet yardımları alanında "Yeni Bölgesel Yardım Rehberi", "İklim, Enerji ve Çevresel Devlet Yardımı Rehberi", "Risk Finansman Rehberi", "Araştırma, Geliştirme ve Yenilik Çerçevesi" ve "Genişbant Rehberi" ile uyumlu hale getirileceği belirtilmiştir.

Genel Blok Muafiyet Tüzüğü hakkında Komisyon Bildirimi'nin, tüm resmi dillere çeviri sürecinin tamamlanması ile birlikte AB Resmi Gazetesi'nde yayımlanmasını takip eden gün yürürlüğe girmesi beklendiği bildirilmektedir.

Bilgilerinize sunulur.

S.Tansel KÜNBI
Genel Sekreter A.
Şube Müdürü

Ek:

- 1.Geçici Kriz ve Geçiş Çerçevesi Hakkında Komisyon Bildirimi (56 Sayfa)
- 2.Geçici Kriz ve Geçiş Çerçevesi Hakkında Komisyon Açıklaması (2 Sayfa)
- 3.Genel Blok Muafiyet Tüzüğü Hakkında Komisyon Bildirimi (108 Sayfa)
- 4.Genel Blok Muafiyet Tüzüğü Hakkında Komisyon Açıklaması (2 Sayfa)

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State aid: Commission adopts Temporary Crisis and Transition Framework to further support transition towards net-zero economy

Brussels, 9 March 2023

The European Commission has adopted today a new [Temporary Crisis and Transition Framework](#) to foster support measures in sectors which are key for the **transition to a net-zero economy**, in line with the [Green Deal Industrial Plan](#).

The new Temporary Crisis and Transition Framework amends and prolongs in part the [Temporary Crisis Framework](#), adopted on [23 March 2022](#) to enable Member States to support the economy in the context of Russia's war against Ukraine and already amended on [20 July 2022](#) and [28 October 2022](#).

Together with the amendment to the [General Block Exemption Regulation](#) ('GBER') that the Commission endorsed [today](#), the Temporary Crisis and Transition Framework will help speeding up investment and financing for clean tech production in Europe.

Taking into account the feedback received from Member States in the context of a survey and a targeted consultation, and in light of the [Green Deal Industrial Plan](#), the new Temporary Crisis and Transition Framework:

- **Prolongs** the possibility for Member States to further support measures needed for the transition towards a net-zero industry. This concerns in particular **schemes for accelerating the rollout of renewable energy and energy storage, and schemes for the decarbonisation of industrial production processes, which Member States may now set up until 31 December 2025.**
- **Amends** the scope of such measures to make schemes to support renewable energy, energy storage and decarbonisation of industrial production processes even easier to design and more effective by: (i) simplifying the conditions for the granting of aid to small projects and less mature technologies, such as renewable hydrogen, by lifting the need for a competitive bidding process, subject to certain safeguards; (ii) expanding the possibilities of support for the deployment of all types of renewable energy sources; (iii) expanding the possibilities of support for the decarbonisation of industrial processes switching to hydrogen-derived fuels; and (iv) providing for higher aid ceilings and simplified aid calculations.
- **Introduces new measures, applicable until 31 December 2025, to further accelerate investments in key sectors for the transition towards a net-zero economy**, enabling investment support for the manufacturing of strategic equipment, namely batteries, solar panels, wind turbines, heat-pumps, electrolyzers and carbon capture usage and storage as well as for production of key components and for production and recycling of related critical raw materials. More specifically, Member States may:
 - Design simple and effective schemes, providing support capped at a certain percentage of the investment costs and nominal amounts, depending on the location of the investment and the size of the beneficiary. Small and medium-sized enterprises ('SMEs') as well as companies located in disadvantaged regions are eligible for higher support, to ensure that cohesion objectives are duly taken into account. Member States may grant even higher percentages of the investment costs if the aid is provided via tax advantages, loans or guarantees. Before granting the aid, national authorities must nevertheless verify the concrete risks of the productive investment not taking place within the European Economic Area ('EEA') and that there is no risk of provoking relocation within the single market.
 - In exceptional cases, provide higher support to individual companies, where there is a real risk of investments being diverted away from Europe. In such situations, Member States may provide either the amount of support the beneficiary could receive for an equivalent investment in that alternative location (the so-called 'matching aid'), or the amount needed to incentivise the company to locate the investment in the EEA (the so-called 'funding gap') whichever is the lowest. This option is subject to a number of

safeguards. First, it can be used only for (i) investments taking place in assisted areas, as defined in the applicable [regional aid map](#); or (ii) cross-border investments involving projects located in at least three Member States, with a significant part of the overall investment taking place in at least two assisted areas, one of which is an "a" area (outermost regions or regions whose GDP per capita is below or equal to 75% of the EU average). Second, the beneficiary should use state-of-the-art production technology from an environmental emissions perspective. Third, the aid cannot trigger relocation of investments between Member States.

The changes approved today will also assist Member States in delivering on specific projects under National Recovery Plans which fall within their scope.

The remaining provisions of the Temporary Crisis Framework (limited amounts of aid, liquidity support in form of State guarantees and subsidised loans, aid to compensate for high energy prices, measures aimed at supporting electricity demand reduction), more linked to the immediate crisis situation, remain applicable until 31 December 2023. With a view to ensuring legal certainty, the Commission will assess at a later stage the need for an extension.

Background

Following two surveys on the implementation of the Temporary Crisis Framework, through which the Commission consulted Member States in late 2022 and early 2023, on [1 February 2023](#), the Commission sent to Member States for consultation a draft proposal, part of the [Green Deal Industrial Plan](#), to transform the [State aid Temporary Crisis Framework](#) into a Temporary Crisis and Transition Framework. Together with the new Framework, [today](#) the Commission endorsed an amendment to the GBER to grant Member States more flexibility to design and directly implement support measures in sectors that are key for the transition to climate neutrality and to a net-zero industry, without the Commission's former approval.

The [Temporary Crisis Framework](#), adopted on [23 March 2022](#), enables Member States to use the flexibility foreseen under State aid rules to support the economy in the context of Russia's war against Ukraine.

The Temporary Crisis Framework has been first amended on [20 July 2022](#), to complement the [Winter Preparedness Package](#) and in line with the [REPowerEU Plan](#) objectives, and further revised on [28 October 2022](#), in line with the Regulation on an emergency intervention to address high energy prices ('[Regulation \(EU\) 2022/1854](#)') and the Commission's proposal [on a new emergency regulation](#) to address high gas prices in the EU and ensure security of supply this winter.

Sanctioned Russian-controlled entities are excluded from the scope of these measures.

More information on the Temporary Crisis Framework and other actions taken by the Commission to address the economic impact of Russia's war against Ukraine can be found [here](#).

IP/23/1563

Quotes:

State aid rules, and in particular the Temporary Crisis Framework, have helped Member States cushion the impact of the current crisis in Europe. The Framework that we have adopted today gives Member States the option to give State aid in a fast, clear and predictable way. Our rules enable Member States to accelerate net-zero investments at this critical moment, while protecting the level playing field in the Single Market and cohesion objectives. The new rules are proportionate, targeted and temporary.

Margrethe Vestager, Executive Vice-President in charge of competition policy - 09/03/2023

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Related documents

[Temporary Crisis and Transition Framework - Factsheet.pdf](#)

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EUROPEAN
COMMISSION

Brussels, 9.3.2023
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COMMUNICATION FROM THE COMMISSION

Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia

20.3.2023 / 6605

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COMMUNICATION FROM THE COMMISSION

Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia

1. AGGRESSION AGAINST UKRAINE BY RUSSIA, ITS EFFECT ON THE EU ECONOMY AND THE NEED FOR TEMPORARY STATE AID SUPPORT MEASURES

- (1) On 24 February 2022, after having illegally recognised the non-government controlled areas of Donetsk and Luhansk regions in Ukraine as independent entities, Russia launched an unprovoked and unjustified military aggression against Ukraine. The European Union (EU) and international partners immediately reacted to the serious violation of the territorial integrity, sovereignty and independence of Ukraine by imposing restrictive measures (sanctions). Sanctions were also imposed against Belarus, due to its role in facilitating Russia's military aggression. Further measures have been adopted over the following weeks and months, and others might be adopted as the situation evolves. Russia decided to take certain restrictive economic counter measures of its own and to deliberately weaponise gas flows to the EU.
- (2) The Russian military aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter measures taken, for example by Russia, have economic repercussions on the entire internal market. Undertakings in the EU may be affected in multiple ways, both directly and indirectly. This may take the form of shrinking demand, interruption of existing contracts and projects, with the consequent loss of turn-over, disruptions in supply chains, in particular of raw materials and pre-products, or other inputs no longer being available or not being economically affordable.
- (3) The likelihood of a military aggression by Russia against Ukraine had already had effects on the energy market in the weeks preceding the physical aggression. The Russian military aggression against Ukraine has directly resulted in a disruption of supply chains for EU imports from Ukraine for certain products, especially cereals and vegetable oils, as well as for EU exports to Ukraine. The energy market has been significantly impacted with increases in electricity and gas prices in the EU. High energy prices impact several economic sectors, including some of those particularly hit by the COVID-19 pandemic, like transport and tourism. Some critical products are in short supply, because of the military aggression and the countermeasures taken by Russia. These are specific areas where restricted supply creates the risk of substantial reduction in industrial output, despite ongoing supply substitution. The impact has also been felt on financial markets, in particular with concerns for liquidity and market volatility in commodity trade. The military aggression against Ukraine by Russia has also led to a major displacement of Ukrainian citizens both internally and in neighbouring countries, with a unprecedented inflow into the EU of refugees, with major humanitarian and economic consequences.
- (4) The geopolitical crisis provoked by Russia's aggression against Ukraine is also having a particularly severe impact on the agriculture, food processing, fisheries and aquaculture sectors in the EU. High energy prices feed into high fertilisers prices. Fertiliser supply in the EU is also impacted by these restrictions on fertiliser imports

into the EU from Russia and Belarus. The crisis has had serious consequences on the supply of grain (in particular maize and wheat) and oilseeds (sunflower, rapeseed) or starch-derivatives from Ukraine and Russia to the EU, leading to a strong temporary increase in livestock feed prices. The combined impact of those cost increases in energy, fertiliser, grains and oils is hardest felt by livestock farming in the EU¹. Ukraine is also an important producer and exporter of vegetable oils (sunflower in particular), therefore price increases for those products are affecting operators in the food-processing sector and forcing them to seek for alternatives.

- (5) A second concern is the trade disruption of EU products to Ukraine and also to Russia and Belarus due to the war situation or its direct or indirect effects. This would affect mainly the sectors of wines and spirits, processed foods (including processed fruits and vegetables), chocolate, confectionery, infant formula, and pet food in the case of Russia, fruits and vegetables in the case of Belarus, and most agricultural products in the case of Ukraine.
- (6) The situation is aggravated by the sharp increase of production costs, in part through the increase of nitrogen fertiliser costs due to the extreme increase of the price of natural gas, but also by direct use of energy in agricultural, fishery and aquaculture production processes.
- (7) The geopolitical crisis provoked by Russia's aggression against Ukraine and its weaponisation of energy supplies also exacerbates the urgency for the EU to reduce its dependence on fossil fuels by accelerating the roll-out of renewable energy, decarbonisation of industry and the deployment of capacities in sectors strategic to the transition towards a net-zero economy, also considering global challenges posing a threat of investments in these sectors being diverted in favour of third countries outside the EEA.
- (8) It is against that background that the Commission has decided to adopt this Communication to specify the criteria for the assessment of the compatibility with the internal market of State aid measures that Member States may take to remedy the economic effects following the aggression against Ukraine by Russia and its direct and indirect effects, including the counter measures taken, for example by Russia². A coordinated economic response of Member States and EU institutions is crucial to mitigate the immediate social and economic negative repercussions in the EU, to preserve economic activities and jobs, and to facilitate the structural adjustments

¹ Ukraine is the EU's fourth biggest external food supplier and a key supplier of cereals (52 % of EU maize imports, 19 % soft wheat), vegetable oils (23 %) and oilseeds (22 %, especially rapeseed: 72 %). Global food prices are already high and could still increase in view of the situation.

² For example, on 6 March 2022, the Government of the Russian Federation adopted Decree no 299 Amendment of paragraph 2 of the methodology for determining the amount of compensation to be paid to the patentee when deciding on the use of the invention, utility model, the decision on the use of the invention, without his consent, and the procedure for its payment. This amendment foresees 'no compensation for the use of an invention, utility model or industrial design of the "patent holders" from foreign States which commit 'unfriendly acts''. According to WIPO Global Brand Database, WIPO Global Designs Database, PatentSight database respectively, in March 2022, there were around 150000 trademarks, 2000 industrial designs and 44000 patents held by the EU firms in force in Russia. EU firms' trademarks protected in Russia concern mainly the following sectors: pharma, cosmetics, automotive, chemical and consumer goods, fashion and luxury goods. Given the vague terminology of the amendment of the compensation methodology to be paid to patentee by Decree no 299 of 6 March 2022 adopted by the Russian Government and the economic exposure of EU undertakings and their intangible assets hold in Russia, such a counter measure may have a potential wide and harmful impact on EU undertakings.

needed in response to the new economic situation created by the Russian military aggression against Ukraine.

1.1. Sanctions imposed by the European Union and international partners in response to Russia's aggression against Ukraine

- (9) Following the unprovoked and unjustified aggression against Ukraine by Russia, the Council of the European Union has agreed on several packages of restrictive measures.
- (10) On 23 February 2022, the Council agreed on a package including (i) targeted sanctions against the 351 members of the Russian State Duma and an additional 27 individuals, (ii) restrictions on economic relations with the non-government controlled areas of Donetsk and Luhansk regions of Ukraine, and (iii) restrictions on Russia's access to the EU's capital and financial markets and services³.
- (11) On 25 February 2022, the Council agreed on further sanctions against Russia that target: (i) the financial sector, (ii) the energy, space and transport sectors (aviation), (iii) dual-use goods, (iv) export control and export financing, (v) visa policy, and (vi) additional sanctions against Russian and other (including Belarusian) individuals⁴

³ Council Regulation (EU) 2022/259 of 23 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42 I, 23.2.2022, p. 1); Council Implementing Regulation (EU) 2022/260 and 2022/261 of 23 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42 I, 23.2.2022, p. 3; OJ L 42 I, 23.2.2022, p. 15); Council Regulation (EU) 2022/262 of 23 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 42 I, 23.2.2022, p. 74); Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L 42 I, 23.2.2022, p. 77); Council Decision (CFSP) 2022/264 of 23 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 42 I, 23.2.2022, p. 95); Council Decision (CFSP) 2022/265 and 2022/267 of 23 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42 I, 23.2.2022, p. 98; OJ L 42 I, 23.2.2022, p. 114); and Council Decision (CFSP) 2022/266 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L 42 I, 23.2.2022, p. 109).

⁴ Council Decision (CFSP) 2022/327 of 25 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 48, 25.2.2022, p. 1); Council Regulation (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 49, 25.2.2022, p. 1); Council Decision (CFSP) 2022/329 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 50, 25.2.2022, p. 1); Council Regulation (EU) 2022/330 of 25 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 51, 25.2.2022, p. 1); Council Decision (CFSP) 2022/331 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 52, 25.2.2022, p. 1); Council Implementing Regulation (EU) 2022/332 of 25 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 53, 25.2.2022, p. 1); Council Decision (EU) 2022/333 of 25 February 2022 on the partial suspension of the application of the Agreement between the

- (12) On 28 February 2022, the Council decided to close the European airspace for Russian aircraft and adopted preventive measures to ensure that the Russian Central Bank cannot deploy its international reserves in ways that undermine the impact of the measures taken⁵. The Council also adopted additional sanctions against Russian persons⁶.
- (13) On 1 March 2022, the Council adopted further measures: (i) the removal of selected Russian banks from the SWIFT messaging system⁷, (ii) measures against disinformation spread by Russian State-owned media Russia Today and Sputnik⁸.
- (14) On 2 March 2022, due to its role in facilitating the military aggression, the Council decided to introduce further sanctions against Belarus related to the trade of goods used for the production or manufacturing of tobacco products, mineral products, potassium chloride ('potash') products, wood products, cement products, iron and steel products, and rubber products. It also prohibited the export to Belarus or for use in Belarus of dual-use goods and technology, exports of goods and technology which might contribute to Belarus's military, technological, defence and security development, and exports of machinery, together with restrictions on the provision of related services⁹. The Council also adopted individual measures against 22 Belarusian individuals¹⁰.

European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation (OJ L 54, 25.2.2022, p. 1).

⁵ Council Regulation (EU) 2022/334 of 28 February 2022 amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 57, 28.2.2022, p. 1), and Council Decision (CFSP) 2022/335 of 28 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 57, 28.2.2022, p. 4).

⁶ Council Implementing Regulation (EU) 2022/336 of 28 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ, L 58, 28 February 2022, p. 1) and Council Decision (CFSP) 2022/337 of 28 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ, L 59, 28 February 2022, p. 1).

⁷ Council Regulation (EU) 2022/345 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 63, 2.3.2022, p. 1), and Council Decision (CFSP) 2022/346 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 63, 2.3.2022, p. 5).

⁸ Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 65, 2.3.2022, p. 1), and Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 65, 2.3.2022, p. 5).

⁹ Council Regulation (EU) 2022/355 of 2 March 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus (OJ L 67, 2.3.2022, p. 1), and Council Decision (CFSP) 2022/356 of 2 March 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ L 67, 2.3.2022, p. 103).

¹⁰ Council Regulation (EU) 2022/345 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 63, 2.3.2022, p. 1) and Council Decision (CFSP) 2022/354 of 2 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 63, 2.3.2022, p. 5).

(15) On 9 March 2022, the Council adopted additional measures targeting the Belarusian financial sector, including a SWIFT ban for three Belarusian banks, a prohibition on transactions with the Central Bank of Belarus, limits on the financial inflows from Belarus to the EU and a prohibition on the provision of euro-denominated banknotes to Belarus¹¹. The Council also introduced further restrictive measures with regard to the export of maritime navigation goods and radio communication technology to Russia. In addition, the Council imposed restrictive measures on an additional 160 individuals¹². On 15 March 2022¹³, the Council agreed on further sectoral and individual measures against Russia. The Council decided in particular to: (i) prohibit all transactions with certain State-owned enterprises, (ii) prohibit the provision of any credit rating services, as well as access to any subscription services in relation to credit rating activities, to any Russian person or entity, (iii) expand the list of persons connected to Russia's defence and industrial base, on whom tighter export restrictions are imposed regarding dual-use goods and technology which might contribute to Russia's technological enhancement of its defence and security sector, (iv) prohibit new investments in the Russian energy sector, and introduce a comprehensive export restriction on equipment, technology and services for the energy industry, and (v) introduce further trade restrictions concerning iron and steel, as well as luxury goods¹⁴. Furthermore, the Council decided to sanction key Russian oligarchs, lobbyists and propagandists, as well as key companies in the aviation, military and dual use, shipbuilding and machine building sectors¹⁵.

(16) On 3 June 2022, the Council adopted a sixth package of sanctions¹⁶, in light of Russia's continuing war of aggression against Ukraine, Belarus' support for it, and the

¹¹ Council Regulation (EU) 2022/398 of 9 March amending Council Regulation (EU) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 82, 9.3.2022, p. 1).

¹² Council Regulation (EU) 2022/394 of 9 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 81, 9.3.2022, p. 1).

¹³ Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 87, 15.3.2022, p. 1); Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 87I, 15.3.2022, p. 13).

¹⁴ Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 87 I, 15.3.2022, p. 13), and Council Decision (CFSP) 2022/430 of 15 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 87 I, 15.3.2022, p. 56).

¹⁵ Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 87 I, 15.3.2022, p. 1), and Council Decision (CFSP) 2022/429 of 15 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 87 I, 15.3.2022, p. 44).

¹⁶ Council Implementing Regulation (EU) 2022/876 of 3 June 2022 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 153, 3.6.2022, p. 1); Council Regulation (EU) 2022/877 of 3 June 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 153, 3.6.2022, p. 11); Council Implementing Regulation (EU) 2022/878 of 3 June 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or

reported atrocities committed by the Russian armed forces. The package includes: 1) a ban on imports from Russia of crude oil and refined petroleum products, with limited exceptions; 2) a SWIFT ban for an additional three Russian bank and one Belarusian bank; and 3) a suspension of broadcasting in the Union for three more Russian State-owned outlets. The Union also adopted sanctions against an additional 65 individuals and 18 entities. They include individuals responsible for the atrocities committed in Bucha and Mariupol.

- (17) On 21 July 2022, the Council adopted a seventh package, also called a ‘maintenance and alignment package’¹⁷ consisting of the following additional measures: 1) gold import ban, 2) reporting requirements strengthened for sanctioned individuals; 3) targeted export bans; 4) port access ban; 5) financial sanctions; 6) food and energy security; 7) medical and pharmaceutical exemptions. The Union also added 54 individuals and 10 entities on the asset freeze list.
- (18) On 6 October 2022, the Council adopted an eighth package of sanctions consisting of the following additional measures¹⁸: 1) additional listing of persons and entities in the

threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 153, 3.6.2022, p. 15); Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 153, 3.6.2022, p. 53); Council Regulation (EU) 2022/880 of 3 June 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 153, 3.6.2022, p. 75); Council Implementing Decision (CFSP) 2022/881 of 3 June 2022 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 153, 3.6.2022, p. 77); Council Decision (CFSP) 2022/882 of 3 June 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 153, 3.6.2022, p. 88); Council Decision (CFSP) 2022/883 of 3 June 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 153, 3.6.2022, p. 92); Council Decision (CFSP) 2022/884 of 3 June 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 153, 3.6.2022, p. 128); Council Decision (CFSP) 2022/885 of 3 June 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 153, 3.6.2022, p. 139).

¹⁷ Council Regulation (EU) 2022/1269 of 21 July 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 193, 21.7.2022, p. 1), Council Implementing Regulation (EU) 2022/1270 of 21 July 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 193, 21.7.2022, p. 133), Council Decision (CFSP) 2022/1271 of 21 July 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 193, 21.7.2022, p. 196), Council Decision (CFSP) 2022/1272 of 21 July 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 193, 21.7.2022, p. 219).

¹⁸ Council Regulation (EU) 2022/1903 of 6 October 2022 amending Regulation (EU) 2022/263 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas, (OJ L 259I, 6.10.2022, p. 1), Council Regulation (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, (OJ L 259I, 6.10.2022, p. 3), Council Regulation (EU) 2022/1905 of 6 October 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 259I, 6.10.2022, p. 76), Council Implementing Regulation (EU) 2022/1906 of 6 October 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 259I, 6.10.2022, p. 79), Council Decision (CFSP)

sanctions list; 2)) extension of restrictions to the oblasts of Kherson and Zaporizhzhia; 3) new import and export restrictions; 4) implementing the G7 oil price cap; 5) restrictions on State-owned enterprises; 6) restrictions on financial, IT consultancy and other business services; and 7) deterring sanctions circumvention.

- (19) On 16 December 2022, the Council adopted a ninth package of sanctions¹⁹ in response to Russia's invasion of Ukraine, including bans on exports of drone engines, exports of dual-use goods and technology, investments in the mining sector, transactions with the Russian Regional Development Bank, and the provision of advertising, market research and public opinion polling services; in addition, the Council decided to adopt a comprehensive package of individual measures. On 25 February 2023, the Council adopted a tenth package of sanctions, imposing further export bans on critical technology and industrial goods, such as electronics, specialised vehicles, machine parts, spare parts for trucks and jet engines, as well as goods for the construction sector which can be directed to Russia's military, such as antennas or cranes. The Council also decided to impose restrictive measures on an additional 87 individuals and 34 entities.²⁰

2022/1907 of 6 October 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L259I, 6.10.2022, p. 98), Council Decision (CFSP) 2022/1908 of 6 October 2022 amending Decision (CFSP) 2022/266 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L259I, 6.10.2022, p. 118), Council Decision (CFSP) 2022/1909 of 6 October 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L259I, 6.10.2022, p. 122).

- ¹⁹ Council Regulation (EU) 2022/2474 of 16 December 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 322I, 16.12.2022, p. 1), Council Regulation (EU) 2022/2475 of 16 December 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 322I, 16.12.2022, p. 315), Council Implementing Regulation (EU) 2022/2476 of 16 December 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 322I, 16.12.2022, p. 318), Council Decision (CFSP) 2022/2477 of 16 December 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 322I, 16.12.2022, p. 466), Council Decision (CFSP) 2022/2478 of 16 December 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 322I, 16.12.2022, p. 614), Council Decision (CFSP) 2022/2479 of 16 December 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 322I, 16.12.2022, p. 687).

- ²⁰ Council Regulation (EU) 2023/426 of 25 February 2023 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 059I, 25.2.2023, p.1); Council Regulation (EU) 2023/427 of 25 February 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 059I, 25.2.2023, p. 6); Council Implementing Regulation (EU) 2023/429 of 25 February 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 059I, 25.2.2023, p. 278); Council Decision (CFSP) 2023/432 of 25 February 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 059I, 25.2.2023, p. 437); Council Decision (CFSP) 2023/434 of 25 February 2023 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 059I, 25.2.2023, p. 593).

- (20) In close cooperation with the EU, sanctions were also imposed by international partners, notably the United States, the United Kingdom, Canada, Norway, Japan, South Korea, Switzerland and Australia.

1.2. Undertakings and households affected by high gas and electricity prices or by disruptions of energy supply

- (21) The current crisis has driven up the prices for gas and electricity to unprecedented highs, significantly above the already elevated levels observed in the period before the aggression. Russia's deliberate weaponisation of gas flows has created significant volatility and uncertainty in the EU and global energy markets. The EU and its Member States have taken numerous measures to address high prices and secure energy supplies. In this context, the Commission refers to the toolbox which it presented already in October 2021²¹ (the 'October Communication'), the REPowerEU Communication of 8 March 2022 ('the REPowerEU Communication')^{22, 23}, the REPowerEU Plan²⁴ of 18 May 2022, the Gas Storage Regulation²⁵, the Save Gas for a Safe Winter Communication²⁶ of 20 July 2022, the Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas²⁷ and the Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices²⁸. On 18 October 2022, the Commission adopted the Energy Emergency Communication²⁹ to prepare, purchase and protect the EU together. In conjunction with this Communication the Commission proposed a new emergency regulation³⁰ to address high gas prices in the EU and ensure security of supply for the upcoming winter. This will be done through

²¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2021) 660 final of 13 October 2021 - Tackling rising energy prices: a toolbox for action and support.

²² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 108 final of 8 March 2022 – REPowerEU: Joint European Action for more affordable, secure and sustainable energy.

²³ Through the Technical Support Instrument established by Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 (OJ L 57, 18.2.2021, p. 1), the Commission supports Member States on request in designing and implementing reforms aimed at ensuring more affordable, secure and sustainable energy.

²⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2022/230 final of 18 May 2022 – REPowerEU Plan.

²⁵ Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (OJ L 173, 30.06.2022, p.17).

²⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 360 final of 20 July 2022 – “Save gas for a safe winter”.

²⁷ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

²⁸ Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 261I, 7.10.2022, p. 1).

²⁹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2022/553 final of 18 October 2022 - Energy Emergency - preparing, purchasing and protecting the EU together.

³⁰ Proposal for a Council Regulation, COM/2022/549 final of 18 October 2022 - Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks.

joint gas purchasing, price limiting mechanisms on the TTF gas exchange, new measures on transparent infrastructure use and solidarity between Member States, and continuous efforts to reduce gas demand.

- (22) Very high energy prices are hurting the economy as well as the purchasing power of EU citizens, notably the most vulnerable. The European Central Bank estimated that real GDP will contract by 0.1% in the last quarter of 2022 and remain flat in the first quarter of 2023 mainly owing to the impact of energy supply disruptions, higher inflation and the related fall in confidence.³¹ Continued high energy prices are likely to increase poverty and affect business competitiveness. Energy-intensive industries in particular have faced higher manufacturing costs. These cost increases can in certain cases put into question the continued activity in the EU of undertakings which otherwise would be profitable, with a likely subsequent impact on employment.
- (23) The toolbox presented by the Commission in October 2021 has proven useful, and has been extensively applied by many Member States who have adopted numerous measures at national level. The toolbox was expanded in spring 2022 with the Communication on short-term market interventions and long-term improvements to the electricity market design³².
- (24) The REPowerEU Communication outlined measures to respond to rising energy prices and replenish gas stocks for the winter and the REPowerEU plan³³ sets out actions to accelerate the rollout of renewable energy, energy savings and energy efficiency and to diversify energy supplies. Accelerating the green transition will reduce emissions, reduce dependency on imported fossil fuels, and protect against price hikes. The Gas Storage Regulation³⁴ established new minimum gas storage obligations to ensure supply for the coming winter, requiring Member States to fill gas storage facilities by 1 November to 80% in 2022 and to 90% by the same date in the years to follow.
- (25) As the crisis further amplified risks of security of supply and disruptions, the Union started to prepare for a protracted and possibly full cut of gas from Russia. The new European Gas Demand Reduction Plan³⁵ sets out measures, principles and criteria for coordinated demand reduction and is accompanied by the Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas³⁶ which sets a voluntary gas demand reduction target of 15% in all Member States and introduces a process to trigger a binding demand reduction target should it become necessary.

³¹ ECB staff macroeconomic projections for the euro area, September 2022.

³² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 236 final of 18 May 2022 – Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action.

³³ COM/2022/230 final, 18 May 2022.

³⁴ Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (OJ L 173, 30.06.2022, p. 17).

³⁵ European Commission, Directorate-General for Communication, *A European Gas Demand Reduction Plan*, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2775/705563>.

³⁶ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

- (26) On 6 October 2022, the Council adopted Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices to reduce the energy bills for European citizens and businesses. Among others, the Regulation (EU) 2022/1854 includes measures to reduce electricity demand, which will help lower the electricity costs for consumers and to redistribute the energy sector's surplus revenues to final customers.
- (27) On 19 and 22 December 2022, the Council adopted further Regulations to tackle the high energy prices, namely: Council Regulation (EU) 2022/2576 on enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks³⁷, Council Regulation (EU) laying down a framework to accelerate the deployment of renewable energy³⁸ and Council Regulation (EU) 2022/2578 establishing a market correction mechanism to protect citizens and the economy against excessively high prices³⁹.

1.3. The need for close European coordination of national aid measures

- (28) Targeted and proportionate application of EU State aid control serves to ensure that national support measures are effective in helping undertakings and workers affected by the current crisis and preserving the long-term fiscal sustainability of the national support measures. EU State aid control also ensures that the EU internal market is not fragmented and that the level playing field stays intact. The integrity of the internal market is important to withstand external pressure and to avoid subsidy races, where Member States with deeper pockets can outspend neighbours to the detriment of cohesion within the Union.
- (29) The Commission considers that the current crisis affecting undertakings in all Member States justifies to allow a calculation of maximum aid ceilings in the applicable sections based on a per Member State basis, as long as it remains ensured that eligible costs may only be covered once and that the specific aid ceilings, applicable under the present Communication, are respected.
- (30) The Commission further considers that in order to address the fossil fuel dependency as a major element exacerbating the crisis and to accelerate the green transition in line with REPowerEU objectives, while ensuring the resilience of future EU low-carbon energy system, additional strategic investments are required. This is particularly relevant in the current global context where such investments are at risk of being diverted away from the EEA. While sections 2.5 and 2.6 of this Communication provide relevant tools to deploy renewable energy generation projects and implement industrial decarbonisation measures, those tools have an important but indirect effect on the production of the equipment and components needed for the transition towards a net-zero economy. Against this background, section 2.8 of this Communication provides Member States with additional possibility to grant aid that directly supports productive investments in specified strategic goods necessary for this transition. As the Union's instrument for catalysing private investment into EU priority areas, InvestEU

³⁷ Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders, (OJ L 335, 29.12.2022, p. 1).

³⁸ Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, (OJ L 335, 29.12.2022, p. 36).

³⁹ Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices, (OJ L 335, 29.12.2022, p. 45).

has a central role in mobilising support for those priority areas, in particular with regard to energy and the Green Deal Industrial Plan⁴⁰. Therefore, to the extent that the measures put in place by the implementing partners and financial intermediaries of InvestEU are subject to state aid rules, those measures may be covered by the schemes approved by the Commission under sections 2.5, 2.6 and 2.8 of this Communication. Because the support of investments into production facilities could lead to tensions with overarching objectives of the integrity of the internal market and cohesion, such support needs to be clearly confined to the defined strategic areas, limited in time and nominal aid amounts and ensure sufficient incentives to address cohesion objectives. This Communication sets out in section 2.8 the specific conditions under which support for investments for specific measures for the transition towards a net-zero economy will exceptionally be considered compatible. In so far as this section covers the possibility to provide individual support outside a scheme, it will either be limited to assisted areas as defined in the applicable regional aid maps or it will have to involve investments in at least three EEA Member States, of which a significant part should take place in at least two assisted areas. This requirement will contribute to the further development of a broader ecosystem along the relevant value chain across Europe, strengthening the supply chain resilience.

1.4. Appropriate State aid measures

- (31) In the overall effort of Member States to address the challenges resulting from the Russian war of aggression against Ukraine, this Communication sets out the possibilities Member States have under EU State aid rules to ensure liquidity and access to finance for undertakings, especially SMEs that face economic challenges under the current crisis, and to incentivise reduced energy consumption.
- (32) As set out in the 2021 October Communication, measures benefiting non-commercial energy consumers do not constitute State aid, provided they do not indirectly benefit a specific sector or undertaking. Member States can, for example, make specific social payments to those most at risk which could help them afford their energy bills in the short term, or provide support for energy efficiency improvements, while ensuring effective market functioning.
- (33) Measures targeting commercial energy consumers do not constitute State aid, provided such measures are of a general nature. Such non-selective measures can, for example, take the form of general reductions in taxes or levies, a reduced rate to the supply of natural gas, electricity or district heating or reduced network costs. To the extent national interventions qualify as aid, they may be considered compatible with State aid rules if they meet certain requirements. For example, aid in the form of reductions in harmonised environmental taxes that respect the minimum levels of taxation and the rules set out in the Energy Taxation Directive⁴¹ and are in line with the provisions of a Block Exemption Regulation may be implemented by Member States without prior notification to the Commission.

⁴⁰ COM(2023) 62 final, Communication from the Commission to the European Parliament, the European Council, the Council, the Economic and Social Committee and the Committee of the Regions, A Green Deal Industrial Plan for the Net-Zero Age, 1.2.2023.

⁴¹ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

- (34) With respect to sections 2.1 and 2.4 of this Communication aid can be granted directly to the final beneficiary or channelled through an energy supplier. If aid is channelled through an energy supplier, the Member State must demonstrate that it operates a mechanism that preserves competition between suppliers and that ensures that the aid is passed on to the final beneficiary.
- (35) The Commission considers that certain financial needs may require different tools than those covered by sections 2.1, 2.2 and 2.3 of this Communication. This might in particular be the case where the current crisis leads not only to liquidity needs but also to considerable losses that may undermine the beneficiary's ability to service its debt and point at solvency needs. In cases where large amounts of aid are granted to individual beneficiaries and where the ability of those beneficiaries to service their debt, based on their past earning capacity, seems challenging, Member States may consider asking for information from the beneficiaries about their projected future earnings capacity to continue servicing the debt, with the aim of assessing whether the use of different tools, such as solvency support, may be or may become more adequate to address their financial needs.
- (36) In specific circumstances⁴², Member States may consider that undertakings severely affected by the current crisis require solvency support that cannot be sufficiently provided via private sources alone. Where undertakings would cease or downsize operations without such solvency support and when ceasing or downsizing operations would threaten energy markets or other markets which are of systemic importance for the economy (or for the security and resilience of the internal market), such solvency support might be considered compatible based on Article 107(3)(b) TFEU.
- (37) The Commission considers the following general principles as particularly relevant in the required case-by-case assessment outlined in point 36 above:
- a. the aid must be necessary, appropriate and proportionate⁴³ to avoid a sudden exit from the market of such undertakings and must in any case not exceed the minimum needed to ensure its viability;
 - b. a company belonging to or being taken over by a larger business group is not eligible for aid, except where it can be demonstrated that the company's difficulties are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. In such cases, a substantial contribution by the group to the costs of the solvency measure will typically be required;
 - c. state aid must be granted on terms that afford the State a reasonable remuneration such as an appropriate share of future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses, including foreseeable losses without the aid measure, have been accounted for;

⁴² Intervention needs to be limited to situations where it is in the common interest to intervene.

⁴³ In principle, aid is proportionate if it does not go beyond restoring the capital structure of the beneficiary to the one predating the crisis caused by the aggression of Ukraine by Russia. In assessing the proportionality of the aid, State aid received or planned in the context of the current crisis, and in particular aid provided under this Communication will be taken into account.

- d. where aid takes the form of subordinated debt or other hybrid capital instruments, the overall remuneration of such instruments must adequately factor in the characteristics of the instrument chosen, including its level of subordination and all modalities of payment;
 - e. appropriate competition measures in line with the principles set out in the 2014 Rescue and Restructuring Guidelines⁴⁴ will be necessary. Based on the specificities of each potential case and the relevant competitive landscape, divestments of assets may also be required as a compensatory measure. Furthermore, behavioural measures, including commitments ensuring an effective ban on bonus payments or other variable payments, dividend payments, and acquisitions will be required;
 - f. The Commission may require the Member State to provide, also at a time later than the Commission decision, an assessment of the long-term viability of the beneficiary accompanying the notification or at a later date. The Member State must undertake, where considered appropriate by the Commission after examining such assessment, to notify within a period of time determined by the Commission, a restructuring plan as set out in the Rescue and Restructuring Guidelines for approval by the Commission.
- (38) Member States are invited to consider, in a non-discriminatory way, setting requirements related to environmental protection or security of supply for granting aid under section 2.4 and 2.8 of this Communication. This could, for example, take the following forms:⁴⁵
- a. Requiring the beneficiary to meet a certain share of energy consumption needs by renewable energies, *e.g.* via power purchasing agreements or direct investments in energy generation from renewable energies;
 - b. Requiring investments in energy efficiency, reducing the energy consumption relative to economic output *e.g.* by reduced consumption for production processes, heating or transportation, in particular through measures implementing recommendations from energy audits carried out pursuant to Article 8 (2) or (4) and Annex VI of Directive 2012/27/EU;
 - c. Requiring investments to reduce or diversify natural gas consumption, *e.g.* by electrification measures using renewable energy sources or circular solutions such as the re-use of waste gases;
 - d. Requiring flexibilisation of investments, to facilitate better adaptations of business processes to price signals on electricity markets.
- (39) Member States may also grant aid to make good the damage caused by exceptional occurrences under Article 107(2)(b) TFEU. Such State aid aimed at mitigating damage directly caused by the current and exceptional occurrences of the Russian aggression

⁴⁴ Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

⁴⁵ Member States are invited to make use of the possibilities for granting aid approved under the Guidelines on State aid for climate-, environmental protection and energy (CEEAG 2022), notably as regards renewable energies, energy efficiency or other decarbonisation measures.

against Ukraine may also cover the effects of certain consequences of the Russian aggression, including the economic sanctions imposed or of the counter measures negatively affecting the beneficiary from operating its economic activity or a specific and severable part of its economic activity.

- (40) Damage directly caused by mandatory reductions in natural gas or electricity consumption which may have to be imposed by Member States can be assessed under Article 107(2)(b) TFEU, provided there is no overcompensation.
- (41) Member States must notify such aid measures and the Commission will assess them directly under Article 107(2)(b) TFEU. Such aid may be granted to undertakings in difficulty.
- (42) In line with Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas⁴⁶, Member States may consider appropriate measures to incentivise voluntary reductions in natural gas demand. Where Member States envisage introducing such incentives in the context of the current crisis, the Commission will assess such measures directly under Article 107(3)(b) TFEU. While this will require a case-by-case assessment, the Commission considers the following elements to be particularly relevant:
- a. the use of a competitive process based on transparent criteria to contract volumes for voluntary demand reduction;
 - b. the absence of any formal restrictions to cross-border trade or flows;
 - c. the limitation of the incentives concerned to demand reductions in the future that go beyond those that the beneficiary would have undertaken regardless of the measure;
 - d. an immediate reduction in aggregate final gas demand in the Member State concerned while avoiding a mere shift in demand for natural gas.
- (43) Member States may also consider measures to incentivise the filling of gas storage facilities to the extent that the market does not provide incentives to do so adequately. Where Member States envisage granting incentives for the filling of gas storage facilities in the context of the current crisis, the Commission will assess them directly under Article 107(3)(b) TFEU⁴⁷. While this will require a case-by-case assessment, the Commission considers the following elements as particularly relevant:
- a. the use of a competitive process based on transparent criteria to minimise the aid;
 - b. the absence of any restrictions to cross-border trade or flows;
 - c. the presence of safeguards to avoid overcompensation;

⁴⁶ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

⁴⁷ See Commission decision of 12.7.2022 on SA.103012 (2022/NN) - Incentive measure to store natural gas in the Bergermeer storage facility for the next heating period.

- d. the compliance with the obligations and conditions for filling and incentivizing gas storage set out in Article 6a to Article 6d of Regulation (EU) 2017/1938⁴⁸, in particular the conditions for support measures set out in Article 6b, paragraphs (2) and (3).
- (44) The Commission will consider on a case-by-case basis possible necessary, proportionate and appropriate aid, in line with the Commission Communication ‘Save gas for a safe winter’⁴⁹ and the national gas security of supply emergency plans, in order to adapt facilities that will contribute to replace gas, for a limited period of time, with another more polluting carbon fuel. Any such alternative carbon fuel must have the lowest possible emissions content, while the aid should be subject to energy efficiency efforts and must avoid lock-in effects beyond the crisis, in line with EU climate objectives. Such measures can be aimed at both pre-emptively reducing the consumption of gas or to respond to mandatory reductions in natural gas demand, unless otherwise compensated.⁵⁰
- (45) In view of the challenges to transport goods to and from Ukraine, the Commission will consider on a case-by-case basis possible aid for insurance or reinsurance regarding transport of goods to and from Ukraine. Among other things, Member States will need to show that the insurance or reinsurance is not available at all or at rates which are substantially higher than before Russia's invasion of Ukraine.
- (46) The transport of refugees and humanitarian material does not fall in principle under EU State aid rules, as long as the State is acting in the exercise of public powers (as opposed to carrying out an economic activity) and as long as the transport services are not purchased at a level above the market price.
- (47) Aid granted by Member States under this Communication to undertakings, which is channelled through credit institutions as financial intermediaries, shall benefit those undertakings directly. However, it may confer an indirect advantage on the financial intermediaries. Nevertheless, under the safeguards of sections 2.2 and 2.3, such indirect advantages do not have the objective to preserve or restore the viability, liquidity or solvency of the credit institutions. As a result, such aid would not be qualified as extraordinary public financial support under Directive 2014/59/EU of the European Parliament and of the Council (the Bank Recovery and Resolution Directive - BRRD)⁵¹ or under Regulation (EU) 806/2014 of the European Parliament and of the Council (the Single Resolution Mechanism - SRM Regulation)⁵², and would not be assessed under the State aid rules applicable to the banking sector⁵³.

⁴⁸ As amended by Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 (OJ L 173, 30.6.2022, p. 17).

⁴⁹ COM(2022) 360 final, 20.7.2022.

⁵⁰ An example in the context of power generation is Commission decision of 30.9.2022 on State Aid SA.103662(2022/N) – Germany – Temporary lignite power supply reserve to save gas.

⁵¹ OJ L 173, 12.6.2014, p. 190, see Article 2(1)(28) of the BRRD.

⁵² OJ L 225, 30.7.2014, p. 1, see Article 3(1)(29) of the SRM Regulation.

⁵³ Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (OJ C 10, 15.1.2009, p. 2); Communication from the Commission on the treatment of impaired assets in the Community financial sector (OJ C 72, 26.3.2009, p. 1); Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195,

- (48) Aid granted by Member States to credit institutions or other financial institutions under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the current crisis or aid granted by Member States to credit institutions or other financial institutions under section 2.4 of this Communication, which do not have the objective to preserve or restore the viability, liquidity or solvency of an institution or entity would not be qualified as extraordinary public financial support under the BRRD nor under the SRM Regulation, and would also not be assessed under the State aid rules applicable to the banking sector⁵⁴.
- (49) If due to the current crisis credit institutions would need extraordinary public financial support (see Article 2(1)(28) BRRD and Article 3(1)(29) SRM Regulation) in the form of liquidity, recapitalisation or an impaired asset measure, it will have to be assessed whether the measure meets the conditions of Article 32(4)(d) (i), (ii) or (iii) of the BRRD and Article 18(4)(d)(i), (ii) or (iii) of the SRM Regulation. Where the latter conditions are fulfilled, the credit institution receiving such extraordinary public financial support would not be deemed to be failing-or-likely-to-fail.
- (50) To the extent such measures address problems linked to the aggression against Ukraine by Russia and its direct and indirect effects, they would be deemed to fall under point 45 of the 2013 Banking Communication⁵⁵, which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.
- (51) Aid granted under this Communication shall not be conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. Such condition would appear to be harmful to the internal market. Without prejudice to the specific safeguards included in section 2.8 of this Communication, this is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (52) Aid under this Communication shall not be granted to undertakings under sanctions adopted by the EU, including but not limited to:
- a. persons, entities or bodies specifically named in the legal acts imposing those sanctions;
 - b. undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or
 - c. undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

19.8.2009, p. 9); Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (OJ C 329, 7.12.2010, p. 7); Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (OJ C 356, 6.12.2011, p. 7); and Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('2013 Banking Communication') (OJ C 216, 30.7.2013, p. 1).

⁵⁴ Any measures to support credit institutions or other financial institutions that constitute State aid in the meaning of Article 107(1) TFEU, including those which fall outside the present Communication must be notified to the Commission and will be assessed under the relevant State aid rules.

⁵⁵ As defined in footnote 53.

- (53) State aid measures, which entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market. This may be the case, for instance, where the aid is subject to clauses conditioning it directly or indirectly on the origin of products or equipment, such as requirements for the beneficiary to purchase domestically-produced products. The Commission will not authorise aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities.

1.5. Applicability of Article 107(3)(b) of the TFEU

- (54) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid 'to remedy a serious disturbance in the economy of a Member State'. In this context, the Union courts have ruled that the disturbance must affect the whole or an important part of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to make a strict interpretation of any exceptional provision such as Article 107(3)(b) TFEU⁵⁶. That interpretation has been consistently applied by the Commission in its decision-making⁵⁷.
- (55) The Commission considers that the aggression against Ukraine by Russia and its direct and indirect effects, including the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods. Those effects taken together have caused a serious disturbance of the economy in all Member States. Supply chain disruptions and increased uncertainty have direct or indirect effects that affect many sectors. In addition, rising energy prices affect virtually every economic activity in all Member States. The Commission considers accordingly, that a wide range of economic sectors in all Member States are affected by a serious economic disturbance. On that basis, the Commission considers that it is appropriate to lay down the criteria for the assessment of State aid measures that Member States may take to remedy that serious disturbance.
- (56) State aid is in particular justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine and its direct and indirect effects, including the sanctions

⁵⁶ Joined Cases T-132/96 and T-143/96 Freistaat Sachsen and others v Commission, EU:T:1999:326, paragraph 167.

⁵⁷ Commission Decision 98/490/EC in Case C 47/96 Crédit Lyonnais (OJ L 221, 8.8.1998, p. 28), point 10.1; Commission Decision 2005/345/EC in Case C 28/02 Bankgesellschaft Berlin (OJ L 116, 4.5.2005, p. 1), points 153 et seq.; and Commission Decision 2008/263/EC in Case C 50/06 BAWAG (OJ L 83, 26.3.2008, p. 7), point 166. See Commission Decision in Case NN 70/07 Northern Rock (OJ C 43, 16.2.2008, p. 1); Commission Decision in Case NN 25/08 Rescue aid to Risikoabschirmung WestLB (OJ C 189, 26.7.2008, p. 3); Commission Decision of 4 June 2008 in State aid C 9/08 SachsenLB (OJ L 104, 24.4.2009, p. 34); and Commission Decision of 16 June 2017 in case SA.32544 (2011/C) Restructuring of TRAINOSE S.A (OJ L 186, 24.7.2018, p. 25).

imposed by the EU or by its international partners, as well as the economic counter measures taken, for example by Russia.

- (57) The Commission sets out in this Communication the criteria for the compatibility assessment it will apply in principle to the aid granted by Member States in this context under Article 107(3)(b) TFEU. Member States must therefore show that the State aid measures notified to the Commission and falling within the scope of this Communication are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned and that all the requirements of this Communication are fulfilled.
- (58) State aid measures notified and assessed under this Communication are intended to support undertakings active in the EU that are affected by the Russian military aggression and/or its consequences. The aid measures may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and must be in full compliance with the anti-circumvention rules of the applicable regulations⁵⁸. In particular, it must be avoided that natural persons or entities subject to the sanctions benefit directly or indirectly from any such measures⁵⁹.
- (59) State aid measures falling within the scope of this Communication may be cumulated with one another in line with the requirements in the specific sections of this Communication. State aid measures covered by this Communication may be cumulated with aid under de minimis Regulations⁶⁰ or with aid under Block Exemption Regulations⁶¹ provided the provisions and cumulation rules of those Regulations are respected. State aid measures covered by this Communication may be cumulated with aid granted under the COVID-19 Temporary Framework⁶², provided

⁵⁸ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

⁵⁹ Considering the specific situation of two subsequent crises that have affected undertakings in multiple ways, Member States may choose to provide aid under this Communication also to undertakings in difficulty.

⁶⁰ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1); Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9); Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45); and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

⁶¹ 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 (General Block Exemption Regulation); Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, (OJ L 193, 1.7.2014, p. 1); and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

⁶² Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112 I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340 I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

their respective cumulation rules are respected. When Member States grant to the same beneficiary loans or guarantees under the COVID-19 Temporary Framework as well as under this Communication and when the overall amount of the loan principal is calculated on the basis of self-declared liquidity needs of the beneficiary, the Member States must ensure that those liquidity needs are covered only once with aid. Likewise, aid under this Communication may be cumulated with aid under Article 107(2)(b) TFEU but there may be no overcompensation of damage suffered by the beneficiary.

2. TEMPORARY STATE AID MEASURES

2.1. Limited amounts of aid

- (60) Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary limited amounts of aid to undertakings affected by the Russian aggression against Ukraine and/or by its direct or indirect effects can be an appropriate, necessary and targeted solution during the current crisis.
- (61) The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met (the specific provisions for the primary agriculture, the fishery and aquaculture sectors are set out in point 62):
- The overall aid does not exceed EUR 2 million per undertaking per Member State at any given point in time⁶³. The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees⁶⁴ loans⁶⁵ and equity provided the total nominal value of such measures does not exceed the overall cap of EUR 2 million per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charges;
 - the aid is granted on the basis of a scheme with an estimated budget;
 - the aid is granted by 31 December 2023⁶⁶;
 - the aid is granted to undertakings affected by the crisis;
 - the aid granted to undertakings active in the processing and marketing of agricultural products⁶⁷ is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products

⁶³ Aid granted on the basis of schemes approved under this section which has been reimbursed before granting new aid under this section will not be taken into account in determining whether the relevant ceiling is exceeded.

⁶⁴ When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

⁶⁵ When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

⁶⁶ If the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2023.

⁶⁷ As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.

- (62) By way of derogation from point 61(a), the following specific conditions apply to aid granted to undertakings active in the primary production of agricultural products, fishery and aquaculture sectors, in addition to the conditions of point 61(b) to (d):
- the overall aid does not at any point in time exceed EUR 250 000 per undertaking active in the primary production of agricultural products per Member State and EUR 300 000 per undertaking active in the fishery and aquaculture sectors per Member State;⁶⁸ the aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees⁶⁹, loans⁷⁰ and equity provided the total nominal value of such measures does not exceed the overall relevant cap of EUR 250 000 or EUR 300 000 per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charge;
 - aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market;
 - aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Regulation (EU) No 717/2014⁷¹.
- (63) Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 61(a) and 62(a), the Member State concerned must ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 million is not exceeded per undertaking per Member State. Where an undertaking is active exclusively in the sectors covered by point 62(a) the overall maximum amount of EUR 300 000 should not be exceeded per undertaking per Member State.
- (64) Measures granted under this Communication in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2024 and the conditions in this section are complied with.

⁶⁸ Aid granted on the basis of schemes approved under this section that has been reimbursed before granting of new aid under this section must not be taken into account in determining whether the relevant ceiling is exceeded.

⁶⁹ When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

⁷⁰ When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

⁷¹ Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 90, 28.6.2014, p. 45).

2.2. Liquidity support in the form of guarantees

- (65) In order to ensure access to liquidity to undertakings affected by the current crisis, public guarantees on loans for a limited period and loan amount can be an appropriate, necessary and targeted solution during the current circumstances⁷².
- (66) For the same underlying loan principal, guarantees granted under this section may not be cumulated with aid granted under section 2.3 of this Communication and vice versa or with aid granted under sections 3.2 or 3.3 of the COVID-19 Temporary Framework. Guarantees granted under this section may be cumulated for different loans provided the overall loan amount per beneficiary does not exceed the ceilings set out in point 67(e) of this Communication. A beneficiary may benefit in parallel from multiple measures under this section provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 67(e).
- (67) The Commission will consider such State aid in the form of public guarantees as compatible with the internal market on the basis of Article 107(3)(b) TFEU provided:
- Public guarantees are provided on new individual loans made to undertakings⁷³;
 - Guarantee premiums are set per individual loans at a minimum level, which shall increase progressively as the duration of the guaranteed loan increases, as set out in the following table:

Type of recipient	For 1 st year	For 2 nd –3 rd year	For 4 th -6 th years
SMEs	25bps	50bps	100bps
Large enterprises	50bps	100bps	200bps

- As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby guarantee duration, guarantee premiums and guarantee coverage may be modulated for each underlying individual loan principal (for instance, lower guarantee coverage could offset a longer duration or could allow lower guarantee premiums); a flat premium may be used for the entire duration of the guarantee, if it is higher than the minimum premiums for the 1st year set out in the table above for each type of beneficiary, as adjusted according to guarantee duration and guarantee coverage under this paragraph;
- The guarantee is granted by 31 December 2023;

⁷² For the purpose of this section, the term ‘public guarantees on loans’ covers also guarantees on certain factoring products, namely guarantees on recourse and reverse factoring where the factor has the right of recourse to the factoree. Eligible reverse factoring products must be limited to products that are used only after the seller has already executed its part of the transaction, *i.e.* the product or service has been delivered. Financial leasing is also covered by the term ‘public guarantees on loans’. Where public guarantees are aimed at addressing liquidity needs of undertakings that need to provide financial collaterals for trading activities on energy markets, these public guarantees may exceptionally also cover bank guarantees or be provided as financial collateral to central counterparties or clearing members.

⁷³ These individual loans cannot be granted to credit institutions or other financial institutions.

- e. The overall amount of loans per beneficiary, for which a guarantee is granted under this section, shall not exceed:
- i. 15 % of the beneficiary's average total annual turnover over the last three closed accounting periods ⁷⁴ ;
 - ii. 50 % of energy costs over the 12 months preceding the month when the application for aid is submitted ⁷⁵ ; or
 - iii. upon appropriate justification to be provided by the Member State to the Commission for its assessment (for example in connection with the challenges faced by the beneficiary during the current crisis)⁷⁶, the amount of the loan may be increased:
 - to cover the liquidity needs from the moment of granting for the coming 12 months for SMEs⁷⁷ and for the coming 6 months for large enterprises;
 - for large enterprises that need to provide financial collaterals for trading activities on energy markets, to cover liquidity needs derived from these activities from the moment of granting for the next coming 12 months;
 - The liquidity needs should be established through self-certification by the beneficiary⁷⁸;
 - The liquidity needs already covered by aid measures under the COVID-19 Temporary Framework cannot be covered by measures adopted under this Communication;
- f. The duration of the guarantee is limited to maximum six years, unless modulated according to point 67(c), and the guarantee may not exceed:

⁷⁴ When the beneficiaries of the measure are newly established enterprises that do not hold three closed annual accounts, the applicable cap provided by point 67(e)(i) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

⁷⁵ When the beneficiaries of the measure are newly established enterprises that do not have records for the entirety of the preceding twelve months, the applicable cap provided by point 67(e)(ii) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

⁷⁶ Relevant justification could relate to beneficiaries active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter measures taken, for example by Russia. Those effects may include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased risks of cyber-attacks or rising prices for specific inputs or raw-materials affected by the current crisis.

⁷⁷ As defined in Annex I to the General Block Exemption Regulation.

⁷⁸ The liquidity plan may include both working capital and investment costs. The Commission clarifies that while this Communication is in force, Member States may grant under this section additional public guarantees to beneficiaries that have already received such support to take into account new liquidity needs that were not included in the original liquidity needs assessment. Any such support needs to comply with all the conditions of this Communication and needs to ensure that the same liquidity needs are only covered once.

- i. 90 % of the loan principal where losses are sustained proportionally and under same conditions by the credit institution and the State; or
 - ii. 35 % of the loan principal, where losses are first attributed to the State and only then to the credit institutions (*i.e.* a first-loss guarantee); and
 - iii. in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally;
- g. Upon appropriate justification to be provided by the Member State and by derogation from points 67(a), 67(e), 67(f) and 67(h), the public guarantee can be provided as unfunded financial collateral⁷⁹ to central counterparties or clearing members to cover new liquidity needs derived from the need to provide financial collaterals for cleared trading activities on energy markets for energy undertakings. The coverage for these unfunded guarantees may exceptionally exceed 90%. For these unfunded guarantees, the Member State has to:
 - i. if the guarantee coverage exceeds 90%, demonstrate the need for such higher coverage, based on robust and specific evidence and commit to validate and regularly monitor that final beneficiaries are not able to meet these liquidity needs through other sources of internal or external financing, including other aid under this Communication;
 - ii. justify the amount of the guarantees, which in any case may not exceed the amount to cover the liquidity needs for the coming 12 months that are derived from the need to provide financial collaterals for cleared trading activities on energy markets. Member States have to review these needs on a regular basis;
 - iii. justify the period for which the guarantee is granted, which has to be limited to 31 December 2023 and in any case does not exceed the period where such guarantees are considered as highly liquid collateral according to the Commission Delegated Regulation (EU) 2022/2311 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements⁸⁰;
 - iv. demonstrate how the conditions for the mobilisation of the guarantee will sufficiently address moral hazard concerns regarding the beneficiary and financial intermediary. In particular, this concerns the condition on the recovery from the final beneficiary of the guaranteed amounts, where the Member State's claims on the final beneficiary's assets have to rank at the same or higher priority level as the final beneficiary's other outstanding senior debt and loans;

⁷⁹ As explained in footnote 72 and in contrast to public guarantees on loans under this section, which are used to facilitate the provision of liquidity directly to undertakings, the public guarantees provided as financial collateral under this point 67(g) are unfunded and provided directly to the central counterparty or clearing member without any underlying instrument.

⁸⁰ Commission Delegated Regulation (EU) 2022/2311 of 21 October 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements, (OJ L 307, 28.11.2022, p. 31) .

- v. indicate the premiums that will be applied for such guarantees, which have to be at least equal to the guarantee premiums referred to in the table of point 67(b) plus 200 bps and, if the central counterparty or clearing member does not charge any interest rate or fees for the unfunded collateral position, the base rate as defined in point 70(b) must be added;
 - vi. ensure that points 67(d) and 67(i) are also complied with. The option under point 67(c) is not applicable and the guarantee shall only relate to liquidity needs as defined in point 67(g);
- h. The guarantee shall relate to investment and/or working capital loans;
- i. Guarantees may be provided directly to final beneficiaries or to credit institutions and other financial institutions as financial intermediaries. The credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the public guarantees to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates than without such public guarantees.

2.3. Liquidity support in the form of subsidised loans

- (68) In order to ensure access to liquidity to undertakings affected by the current crisis, subsidised interest rates for a limited period and loan amount may be an appropriate, necessary and targeted solution during the current circumstances.
- (69) For the same underlying loan principal, loans granted under this section shall not be cumulated with aid granted under section 2.2 of this Communication and vice-versa. Loans and guarantees granted under this Communication may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 67(e) or in point 70(e). A beneficiary may benefit in parallel from multiple subsidised loans under this section provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 70(e).
- (70) The Commission will consider State aid in the form of subsidised loans in response to the current crisis as compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided the following conditions are met:
- a. The loans are not granted to credit institutions or other financial institutions;
 - b. The loans may be granted at reduced interest rates, which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission⁸¹) available

⁸¹ Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6) and published on the website of DG Competition at https://ec.europa.eu/competition-policy/state-aid/legislation/reference-discount-rates-and-recovery-interest-rates_en.

either on 1 October 2022⁸² or applicable at the moment of granting the support, plus the credit risk margins as set-out in the table below⁸³

Type of recipient	Credit risk margin for 1st year	Credit risk margin for a 2nd -3rd year	Credit risk margin for 4th-6th year
SMEs	25bps ⁸⁴	50bps ⁸⁵	100bps
Large enterprises	50bps	100bps	200bps

- c. As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby the loan maturity and the level of credit risk margins may be modulated, for instance, a flat credit risk margin may be used for the entire duration of the loan, if it is higher than the minimum credit risk margin for the 1st year for each type of beneficiary, as adjusted according to the loan maturity under this paragraph^{86 87};
- d. The loan contracts are signed by 31 December 2023 and are limited to maximum six years, unless modulated according to point 70(c);
- e. The overall amount of the loans per beneficiary shall not exceed:
- 15 % of the beneficiary's average total annual turnover over the last three closed accounting periods⁸⁸ ; or
 - 50 % of energy costs over the 12 months preceding the month when the application for aid is submitted⁸⁹ ;
 - with appropriate justification provided by the Member State to the Commission (for example in connection with the challenges faced by the

⁸² For loans granted until 31 December 2022, the base rate of 1 February 2022 may be used.

⁸³ If a grace period is applied for interest payments, the minimum interest rates set out in point 70(b) must be complied with and interests must accrue from the first day of the grace period and must be capitalised at least annually. The duration of the loan contracts will remain limited to maximum of six years from the moment of granting the loan unless modulated in line with point 70(c) and the overall amount of the loans per beneficiary referred to in point 70(e) will not be exceeded.

⁸⁴ The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

⁸⁵ The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

⁸⁶ The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

⁸⁷ See the summary of case practice on modulation under point 70(c) published on the website of DG Competition at https://ec.europa.eu/competition-policy/state-aid/ukraine_en.

⁸⁸ When the beneficiaries of the measure are newly established enterprises that do not hold three closed annual accounts, the applicable cap provided by point 70(e)(i) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

⁸⁹ When the beneficiaries of the measure are newly established enterprises that do not have records for the entirety of the preceding twelve months, the applicable cap provided by point 70(e)(ii) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

beneficiary during the current crisis)⁹⁰, the amount of the loan may be increased:

- to cover the liquidity needs: from the moment of granting for the coming 12 months for SMEs⁹¹ and for the coming 6 months for large enterprises;
- for large enterprises that need to provide financial collaterals for trading activities on energy markets, to cover the liquidity needs derived from these activities from the moment of granting for the next coming 12 months;
- The liquidity needs should be established through self-certification by the beneficiary⁹²;
- The liquidity needs already covered by aid measures under the COVID-19 Temporary Framework shall not be covered by the current Communication;

f. Loans shall relate to investment and/or working capital needs;

g. Loans may be provided directly to final beneficiaries or through credit institutions and other financial institutions as financial intermediaries. In such a case, the credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the subsidised interest rates on loans to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries without conditioning the granting of subsidised loans under this section to refinancing existing loans.

2.4. Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices

(71) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU and the possibilities set out in this Communication, temporary support could alleviate the consequences of exceptionally severe increases in the price of natural gas and electricity caused by Russia's aggression against Ukraine. Such support can be provided to undertakings on the basis of either their current or historical energy consumption. In the former case, the support would enable continued economic activity of the most affected undertakings but would inherently involve less incentives

⁹⁰ Relevant justification could relate to beneficiaries active in sectors that are particularly affected by direct or indirect effects of the Russian aggression, including restrictive economic measures taken by the Union and its international partners, as well as counter measures taken by Russia. Those effects may include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased price volatility on energy markets and related collateral needs, increased risks of cyber-attacks, or rising prices for specific inputs or raw-materials affected by the current crisis.

⁹¹ As defined in Annex I to the General Block Exemption Regulation.

⁹² The liquidity plan may include both working capital and investment costs. The Commission clarifies that while this Communication is in force, Member States may grant under this section additional subsidised loans to beneficiaries that have already received such support to take into account new liquidity needs that were not included in the original liquidity needs assessment. Any such support needs to comply with all the conditions of this Communication and needs to ensure that the same liquidity needs are only covered once.

to save energy. Against the background of the scarcity of gas supplies in the EU, it is also important to maintain strong incentives for demand reductions and gradual shifts towards reducing gas consumption. Support based on historical energy consumption could maintain intact market incentives to reduce energy consumption and help undertakings cope with the consequences of the current crisis, provided beneficiaries do not substantially reduce production activities below what is necessary to realise the targeted energy savings and/or merely shift their consumption elsewhere. Member States are therefore invited to require beneficiaries to provide adequate commitments to that effect. For any eligible period, Member States may put in place a support scheme either on the basis of current or historical energy consumption.

(72) The Commission will consider State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided the following conditions are met:

- a. The aid is granted by 31 December 2023;⁹³
- b. The aid may be granted in the form of direct grants, tax⁹⁴ and payment advantages or other forms such as repayable advances, guarantees⁹⁵, loans⁹⁶ and equity provided the total nominal value of such measures does not exceed the applicable aid intensity and aid ceilings. All figures used must be gross, that is, before any deduction of tax or other charge;
- c. Aid granted in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2024;
- d. The aid is granted on the basis of a scheme with an estimated budget. Member States may limit the aid to activities that support specific economic sectors of particular importance to the economy or to the security and resilience of the internal market, taking into account, for example, the criteria for prioritising critical non-protected customers in the “Save gas for a safe winter” Communication⁹⁷. However, such limits need to be designed broadly and not lead to an artificial limitation of potential beneficiaries;
- e. For the purposes of this section, eligible costs are calculated based on the consumption of natural gas (including as feedstock), electricity, and heating and cooling⁹⁸ directly produced from natural gas and electricity procured by the beneficiary⁹⁹.

⁹³ By way of derogation, when the aid is granted only after an ex post verification of the supporting documentation of the beneficiary and the Member State decides not to include the possibility to grant advance payments in line with point 74, aid may be granted until 31 March 2024 provided the eligible period as defined in point 72(e) is respected.

⁹⁴ If the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2023.

⁹⁵ When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

⁹⁶ When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

⁹⁷ COM/2022/360 final, 20.7.2022.

⁹⁸ In the case of district heating or cooling networks, it may not always be possible to determine precisely the fuel used by the central source. In such situations, Member States may rely on certifications from the district heating operators or estimations indicating the energy mix of the respective networks and use that

The maximum eligible cost is calculated according to the following formula:

$$(p(t) - p(\text{ref}) * 1.5) * q$$

Where:

t is a given month, or a period of several consecutive months, between 1 February 2022 and 31 December 2023 at the latest ('eligible period')

ref is the period from 1 January 2021 to 31 December 2021 ('reference period')

p(t) is the average price per unit consumed by the beneficiary in the eligible period (for example, in EUR/MWh)

p(ref) is the average price per unit consumed by the beneficiary in the reference period (for example, in EUR/MWh)

q is the quantity procured from external suppliers and consumed by the beneficiary as a final consumer¹⁰⁰. It can be set by a Member State as either:

q(t), *i.e.* the consumption of the beneficiary in the eligible period, or

q(ref), *i.e.* the consumption of the beneficiary in the reference period.

As from 1 September 2022, q cannot exceed 70% of the beneficiary's consumption for the same period in 2021.

- f. The overall aid per beneficiary does not exceed 50% of the eligible costs and the overall aid per undertaking per Member State does not exceed EUR 4 million at any given point in time;
 - g. Aid granted under this section may be cumulated with aid granted under section 2.1, provided that the applicable aid ceilings per undertaking under this section are not exceeded. For the same consumption volume, aid granted under this section that is calculated on the basis of historical consumption (q(ref)) may not be cumulated with aid granted under section 2.7.
- (73) In certain situations, further aid may be necessary for beneficiaries suffering from a reduction in economic performance during the crisis. Member States may grant aid exceeding the values calculated pursuant to point 72(f), where, in addition to meeting the conditions in point 72(a) to (e) and (g), the following conditions are met:
- a. The overall aid per beneficiary does not exceed 40% of the eligible costs and the overall aid per undertaking per Member State does not exceed EUR 100 million at any given point in time;

information to calculate the share of consumption of heating/cooling that can be eligible for compensation under this section.

⁹⁹ For the purposes of section 2.4, 'beneficiary' means an undertaking or a legal entity that forms part of an undertaking.

¹⁰⁰ As demonstrated by the beneficiary e.g. based on the respective bill. Only energy consumption by end users will be counted, sales and own production are excluded. The energy consumption of the energy sector itself and losses occurring during transformation and distribution of energy are excluded.

- b. For beneficiaries qualifying as ‘energy-intensive businesses’¹⁰¹ the overall aid per beneficiary may be increased to a maximum of 65% of the eligible costs and the overall aid per undertaking per Member State may not exceed EUR 50 million at any given point in time. The beneficiary must in addition show that it has either a reduction in EBITDA¹⁰² (excluding aid) of at least 40% in the eligible period compared to the reference period, or a negative EBITDA (excluding aid) in the eligible period;
- c. For beneficiaries qualifying as ‘energy-intensive businesses’ active in one or more sectors or sub-sectors listed in Annex I¹⁰³, the overall aid per beneficiary may be increased to a maximum of 80% of the eligible costs and the overall aid per undertaking per Member State may not exceed EUR 150 million at any point in time. The beneficiary must in addition show that it has either a reduction in EBITDA (excluding aid) of at least 40% in the eligible period compared to the reference period, or a negative EBITDA (excluding aid) in the eligible period;
- d. For aid granted under points 73(a), 73(b) and 73(c), the beneficiary’s EBITDA in the eligible period, including the overall aid, may not exceed 70% of its EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0.
- (74) Under this section, the granting authority may make an advance payment to the beneficiary. When doing so, the granting authority may rely on estimations of the eligibility criteria in this section provided that the aid ceilings in this section are respected. The granting authority shall establish a process to verify the relevant eligibility requirements and aid ceilings ex-post on the basis of actual data and claw back any aid payments that do not meet the eligibility criteria or that exceed the aid ceilings no later than six months after the eligible period has ended.

2.5. Aid for accelerating the rollout of renewable energy and energy storage relevant for REPowerEU

- (75) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, it is essential in the context of the current crisis and the REPowerEU Plan¹⁰⁴ to accelerate and expand the availability of renewable energy in a cost-effective way with a view to quickly reducing dependency on fossil fuels imports, accelerate the energy

¹⁰¹ An ‘energy-intensive business’ is a legal entity where the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 3.0% of the production value or turnover, based on data from the financial accounting reports for the calendar year 2021. Alternatively, data for the first semester of 2022 may be used, in which case the beneficiary may qualify as ‘energy-intensive business’ if the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 6.0% of the production value or turnover.

¹⁰² EBITDA means earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments.

¹⁰³ Annex I lists the sectors and subsectors deemed to be particularly exposed to loss of competitiveness by reason of the energy crisis, for which the (sub)sector’s intensity of trade with third countries and emission intensity represent objective proxies. A beneficiary will be considered as active in a sector or subsector listed in Annex I according to the beneficiary’s classification in the sectoral national accounts or if one or several of the activities it carries out and which are included in Annex I generated more than 50 % of its turnover or production value in 2021.

¹⁰⁴ COM/2022/230 final, 18 May 2022.

transition and achieve lower and less volatile energy prices. State aid to accelerate the deployment of renewable energy and energy storage capacity forms part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels in the current context. In the light of the urgent need to ensure the swift implementation of projects that accelerate the rollout of renewable energy and energy storage, certain simplifications for the implementation of support measures are justified on a temporary basis to allow for the implementation of REPowerEU.

- (76) The faster rollout of renewable energy and energy storage may require complementary investments in energy infrastructure, including grid expansion. In line with the Notion of Aid Notice¹⁰⁵, support to energy infrastructure within the framework of a legal monopoly is not subject to State aid rules. In the energy sector, this is particularly relevant for those Member States where the construction and operation of certain infrastructures is exclusively reserved by law for the Transmission System Operator or Distribution System Operator.

- (77) The Commission will consider investment aid for the promotion of energy from renewable sources and for energy storage as compatible with the internal market on the basis of Article 107(3)(c) TFEU provided the following conditions are met:

¹⁰⁵ See the Commission Notice on the Notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1). Given that the notion of State aid is an objective and legal concept defined directly by the Treaty (judgment of the Court of Justice of 22 December 2008, *British Aggregates v Commission*, C-487/06 P, ECLI:EU: C:2008:757, paragraph 111) the views set out in points 373 to 375 are without prejudice to the interpretation of the notion of State aid by the Union Courts (judgment of the Court of Justice of 21 July 2011, *Alcoa Trasformazioni v Commission*, C-194/09 P, ECLI:EU:C:2011:497, paragraph 125); the primary reference for interpreting the Treaty is always the case-law of the Union Courts.

- (iii) investments in storage for renewable hydrogen, biofuels, bioliquids, biogas (including biomethane) and biomass fuels that obtains at least 75 % of its content from a directly connected renewable hydrogen, biofuels, bioliquids, biogas or biomass fuels production facility, on an annual basis;
- b. the aid is granted on the basis of a scheme with an estimated capacity volume and budget;
- c. the support schemes may be limited to one or several technologies covered in point 77(a) but must not include any artificial limitation or discrimination, (including in the award of licences, permits or concessions when they are required);
- d. the aid is granted by 31 December 2025. With the exception of offshore wind technologies, the installations must be completed and be in operation within 36 months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met;
- e. the aid is granted in the form of direct grants, repayable advances, loans¹⁰⁹, guarantees¹¹⁰ or tax advantages including tax credits;
- f. the aid amount is either:
 - (i) determined through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding and undersubscription¹¹¹. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO₂ reduced) or aid per unit of energy output or capacity installed; or
 - (ii) administratively set by the Member State on the basis of data on the investment cost of each supported project;
- g. aid for solar photovoltaic, onshore and offshore wind, and hydropower installations shall be granted only in a competitive bidding process in line with point 77(f)(i).
- h. in derogation from point 77(g) above, a competitive bidding process is not mandatory for solar photovoltaic, onshore and offshore wind, and hydropower installations when the aid granted per undertaking per project does not exceed EUR 30 million and the supported projects are small projects that are defined as:
 - (i) projects with installed capacity equal or below 1MW; or

¹⁰⁹ When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

¹¹⁰ When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

¹¹¹ The volumes of capacity tendered must be set to ensure that the bidding process is effectively competitive. The Member State must prove the plausibility that the volume tendered will match the potential offer of projects. This may be done with reference to past auctions, to technology targets in the National Energy and Climate Plan, or by introducing a safeguard mechanism in case of risk of undersubscribed tenders. In case of repeated undersubscription of competitive bidding processes, the Member State must introduce remedies for any future schemes that it notifies to the Commission for the same technology.

- (ii) projects with an installed capacity equal or below 6 MW, if they are 100 % owned by SMEs or renewable energy communities; or
- (iii) for wind generation only, projects with an installed capacity equal or below 18 MW, if they are 100 % owned by small and microenterprises or by renewable energy communities;

In such a situation, the aid shall be administratively set on the basis of point 77(f)(ii);

i. the aid intensity shall not exceed:

- (i) 100% of the total investment costs when the aid is set in a competitive bidding process on the basis of point 77(f)(i); or
- (ii) 45% of the total investment costs when the aid is administratively set on the basis of point 77(f)(ii); 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;

j. where the aid is granted for the production of renewable hydrogen or for the production of renewable hydrogen-derived fuels¹¹², the Member State must ensure that the hydrogen and the hydrogen-derived fuels are produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;

k. where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts;

l. aid shall be granted with respect to newly installed or repowered capacities¹¹³. The aid amount shall be independent from the energy output. In case of repowered capacities, only the additional costs in relation to the repowered capacity are eligible for aid;

m. aid under this section may be cumulated with any other State aid, except for aid under section 2.5.2 of this Communication, or with centrally managed funds, as long as those measures concern different identifiable eligible costs. Aid may be cumulated with State aid, except for aid under section 2.5.2 of this Communication, or with centrally managed funds in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the applicable aid intensity set out in point 77(i)¹¹⁴;

¹¹² Liquid and gaseous fuels that derive from renewable hydrogen, the energy content of which is derived from renewable sources other than biomass.

¹¹³ Repowering means renewing power plants that produce renewable energy, including the full or partial replacement of installations or operation systems and equipment for the purposes of replacing capacity or increasing the efficiency or capacity of the installation.

¹¹⁴ If the Member State allows for such a cumulation, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point.

- n. aid under this section may be cumulated with aid under section 2.5.2 of this Communication only when the notified aid scheme foresees for that possibility at the time of its initial notification;
- o. aid may be granted for investments for which works started as of 9 March 2023, with the exception of investments eligible under the previous Temporary Crisis Framework for which works may have started as of 20 July 2022; for projects started before 9 March 2023, or before 20 July 2022 for investments eligible under the previous Temporary Crisis Framework, aid may be granted if it is necessary to significantly accelerate or widen the scope of the investment. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid;
- p. the aid must induce the beneficiary to undertake an investment, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law;
- q. the Member State must ensure compliance with the 'do no significant harm' principle.

2.5.2. Operating aid for accelerating the rollout of renewable energy and for energy storage

(78) The Commission will consider operating aid for the promotion of energy from renewable sources and for energy storage as compatible with the internal market on the basis of Article 107(3)(c) TFEU provided the following conditions are met:

- a. the aid is granted for one of the following:
 - (i) production of energy from renewable sources as defined in Article 2 point (1) of Directive (EU) 2018/2001, including the production of renewable hydrogen and renewable hydrogen-derived fuels but excluding the production of electricity from renewable hydrogen;
 - (ii) operation of electricity storage¹¹⁵ and thermal storage¹¹⁶ (also in combination with one of the other types of investments covered by this section);
 - (iii) operation of storage for renewable hydrogen, biofuels, bioliquids, biogas (including biomethane) and biomass fuels that obtains at least 75% of its content from a directly connected renewable hydrogen, biofuels, bioliquids, biogas or biomass fuels production facility, on an annual basis;

¹¹⁵ As defined in footnote 107.

¹¹⁶ As defined in footnote 108.

- b. the aid is granted on the basis of a scheme with an estimated capacity or output volume and budget;
- c. the support schemes may be limited to one or several technologies covered in point 78 (a) but must not include any artificial limitation or discrimination (including in the award of licences, permits or concessions when they are required);
- d. the aid is granted by 31 December 2025. With the exception of offshore wind technologies, the installations must be completed and be in operation within 36 months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met;
- e. the aid is granted in the form of two-way contracts for difference¹¹⁷, in relation to the energy output of the installation and with a contract duration no longer than 20 years after the aided installation starts operations¹¹⁸;
- f. the aid amount is determined either:
 - (i) through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding and undersubscription¹¹⁹. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO₂ reduced) or aid per unit of energy output or capacity; or
 - (ii) with the strike price administratively set by the competent energy regulatory authority¹²⁰ to cover expected net costs, including the estimated WACC, and taking into account all main revenues and any aid already received;
- g. the aid for the production of electricity from solar photovoltaic, onshore and offshore wind, and hydropower shall be granted only in a competitive bidding process in line with point 78(f)(i);
- h. in derogation from point 78(g) above, a competitive bidding process is not mandatory for the production of electricity from solar photovoltaic, onshore and

¹¹⁷ A two-way contract for difference means a contract signed between a power generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration. The contract is designed to preserve incentives for the generating facility to operate and participate efficiently in the energy markets.

¹¹⁸ The support payments under the contract must be limited to 20 years but Member States are free to require installations to continue making paybacks under the contracts for as long as the supported facility continues operating.

¹¹⁹ The volumes of capacity or production tendered must be set to ensure that the bidding process is effectively competitive. The Member State must prove the plausibility that the volume tendered will match the potential offer of projects. This may be done with reference to past auctions, to technology targets in the National Energy and Climate Plan, or by introducing a safeguard mechanism in case of risk of undersubscribed tenders. In case of repeated undersubscription of competitive bidding processes, the Member State must introduce remedies for any future schemes that it notifies to the Commission for the same technology.

¹²⁰ 'Regulatory authority' means a regulatory authority designated by each Member State pursuant to Article 57(1) of Directive (EU) 2019/944 (OJ L 158, 14.6.2019, p. 125).

offshore wind, and hydropower when the aid granted per undertaking per project does not exceed EUR 30 million and the supported projects are small projects that are defined as:

- (i) projects with an installed capacity equal or below 1 MW; or
- (ii) projects with an installed capacity equal or below 6 MW, if they are 100 % owned by SMEs or renewable energy communities; or
- (iii) for wind generation only, projects with an installed capacity equal or below 18 MW, if they are 100 % owned by small and microenterprises or by renewable energy communities;

In such a situation, the aid shall be administratively set on the basis of point 78(f)(ii);

- i. the aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative¹²¹;
- j. where the aid is granted for the production of renewable hydrogen or for the production of renewable hydrogen-derived fuels¹²², the Member State must ensure that the hydrogen and the hydrogen-derived fuels are produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- k. where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts;
- l. the aid shall be granted with respect to newly installed or repowered capacities¹²³;
- m. aid under this section may be cumulated with any other State aid or with centrally managed funds, as long as those measures concern different identifiable eligible costs. Aid may be cumulated with State aid or with centrally managed funds in relation to the same eligible costs, partly or fully overlapping, only if such

¹²¹ Small-scale renewable electricity installations may benefit from direct price support that covers the full costs of operation and does not require them to sell their electricity on the market, in line with the exemption in Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale if their capacity is below the applicable threshold in Article 5 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), (OJ L 158, 14.6.2019, p. 54).

¹²² Liquid and gaseous fuels that derive from renewable hydrogen, the energy content of which is derived from renewable sources other than biomass.

¹²³ As defined in footnote 113.

2.6. Aid for the decarbonisation of industrial production processes through electrification and/or the use of renewable and electricity-based hydrogen fulfilling certain conditions and for energy efficiency measures

- (80) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, it is essential in the context of the current crisis and the REPowerEU Plan to facilitate investments in the decarbonisation of industrial activities with a view to quickly reducing dependency on fossil fuels imports. Accelerating electrification and energy efficiency measures in industry, as well as introducing technologies using renewable and electricity-based hydrogen fulfilling the conditions of point 81(i) or renewable hydrogen-derived fuels fulfilling the conditions of point 81(h) form part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels.
- (81) The Commission will consider compatible with the internal market on the basis of Article 107(3)(c) TFEU aid for investments leading to (i) a substantial reduction of greenhouse gas emissions from industrial activities currently relying on fossil fuels as energy source or feedstock, or (ii) a substantial reduction of energy consumption in industrial activities and processes, provided that all the following conditions are met:
- a. the aid is granted on the basis of a scheme with an estimated budget;
 - b. the maximum individual aid amount that may be granted per undertaking must, in principle, not exceed either 10 % of the total budget available for such a scheme or EUR 200 million. Upon appropriate justification to be provided by the Member State to the Commission for its assessment, the Commission may accept schemes that provide for the granting of individual aid amounts exceeding 10 % of the total budget available for the scheme;
 - c. the aid is granted in the form of direct grants, repayable advances, loans¹²⁵, guarantees¹²⁶ or tax advantages including tax credits;
 - d. the investment¹²⁷ must enable the beneficiary to do one or both of the following:
 - (i) reduce by at least 40 % compared to the situation before the aid, direct greenhouse gas emissions from its industrial installation currently relying on fossil fuels as energy source or feedstock, by means of the electrification of the production processes, or the switch to the use of renewable and electricity-based hydrogen fulfilling the conditions of points 81(g) and (i) or of renewable hydrogen-derived fuels fulfilling the conditions of point 81(h) to substitute fossil fuels; for the purposes of verifying the reduction of greenhouse gas emissions, also actual

¹²⁵ When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

¹²⁶ When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

¹²⁷ Aid for investments that aim to reduce direct greenhouse gas emissions or energy consumption, including below the thresholds in point 81(d) of this Communication, may be exempted from notification provided the rules in the General Block Exemption Regulation are respected.

emissions from the combustion of biomass is to be taken into account;¹²⁸

- (ii) reduce by at least 20 % compared to the situation before the aid, energy consumption in industrial installations in relation to the aided activities;¹²⁹
- e. for investments relating to activities covered by the Emission Trading System (ETS), the aid must lead to a reduction in the beneficiary installation's greenhouse gas emissions going below the relevant benchmarks for free allocation set out in Commission Implementing Regulation (EU) 2021/447¹³⁰;
- f. the aid must not aim at financing an increase of the overall production capacity of the beneficiary. This is without prejudice to limited capacity increases resulting from technical necessity. This is presumed to be the case for capacity increases not exceeding 2 % compared to the situation before the aid;
- g. where the aid is granted for an industrial decarbonisation investment involving the use of renewable hydrogen, the Member State must ensure that the hydrogen used is produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- h. where the aid is granted for an industrial decarbonisation investment involving the use of renewable hydrogen-derived fuels, those fuels comply with the following cumulative requirements:
 - (i) they are liquid and gaseous fuels that derive from renewable hydrogen, the energy content of which is derived from renewable sources other than biomass;
 - (ii) they achieve lifecycle greenhouse gas emissions savings of at least 70% relative to a fossil fuel comparator of 94g CO₂eq/MJ and
 - (iii) they have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.
- i. the aid can also be granted for an industrial decarbonisation investment involving the use of hydrogen produced from electricity in one of the following instances:

¹²⁸ The reduction in direct greenhouse gas emissions must be measured by reference to average direct greenhouse gas emissions occurred over the five years preceding the aid application (average emission on an annual basis).

¹²⁹ The reduction of energy consumption must be measured by reference to energy consumption occurred over the five years preceding the aid application (average consumption on an annual basis).

¹³⁰ Commission Implementing Regulation (EU) 2021/447 of 12 March 2021 determining revised benchmark values for free allocation of emission allowances for the period from 2021 to 2025 pursuant to Article 10a(2) of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 87, 15.3.2021, p. 29).

- l. the aid must not be granted for merely complying with applicable Union standards¹³¹;
- m. the aid must induce the beneficiary to undertake an investment, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law; it is deemed that beneficiaries would continue their activities without changes for investments referred to in point 81(d)(i) above;
- n. the eligible costs are the difference between the costs of the project referred to in point 81(d) and the cost savings or additional revenues, compared to the situation in the absence of the aid, over the lifetime of the investment. The scheme must be designed in a way that allows to address windfall profits, including in times of extremely high electricity or natural gas prices, by putting in place a claw-back mechanism defined ex ante. The aid intensity must not exceed 40 % of the eligible costs. The aid intensity may be increased by 10 percentage points for aid granted to medium sized undertakings and by 20 percentage points for aid granted to small undertakings. The aid intensity may also be increased by 15 percentage points for investments delivering a reduction of direct greenhouse gas emissions of at least 55 % or of energy consumption of at least 25 % compared to the situation prior to the investment¹³²;
- o. as an alternative to point 81(n), the aid amount is determined through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex-ante and minimising the risk of strategic bidding. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO₂ reduced, or EUR per unit of energy saved). The budget related to the bidding process must be a binding constraint in that it can be expected that not all bidders will receive aid;
- p. as a further alternative to points 81(n) and (o), the eligible costs may correspond to the investment costs linked to the project referred to in point 81(d), in particular costs of equipment, machinery or installations needed to achieve the electrification, switch to hydrogen or hydrogen-derived fuels or energy efficiency improvement. In such a situation, the aid intensity must not exceed 60 % of the eligible costs for investments referred to under point 81(d)(i) other than electrification projects. For

¹³¹ 'Union standard' means: (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings, excluding standards or targets set at Union level which are binding for Member States but not for individual undertakings; (b) the obligation to use the best available techniques (BAT), as defined in Directive 2010/75/EU, and to ensure that emission levels do not exceed those that would be achieved when applying BAT; where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU or under other applicable directives, those levels will be applicable for the purpose of this Communication; where those levels are expressed as a range, the limit for which the BAT is first achieved for the undertaking concerned will be applicable.

¹³² The reduction in direct greenhouse gas emissions or energy consumption must be measured by reference to average direct greenhouse gas emissions or energy consumption occurred over the five years preceding the aid application (average emission/consumption on an annual basis).

electrification projects and for the investments referred to under point 81(d)(ii), the aid intensity must not exceed 30% of the eligible costs;

- q. the aid under this section may be cumulated with any other State aid or with centrally managed funds, as long as those measures concern different identifiable eligible costs;
- r. the aid granted in accordance with points 81(n) and (o) may be cumulated with other aid or with centrally managed funds in relation to overlapping eligible costs, provided that the maximum aid amount allowed under points 81(n) and (o) is not exceeded;
- s. the aid granted in accordance with point 81(p) may be cumulated with other aid or with centrally managed Union funds in relation to overlapping eligible costs, provided that the highest aid intensity and/or aid amount applicable under any of the relevant rules is not exceeded. Under no circumstances may the total aid amount exceed 100% of the eligible costs.

2.7. Aid for additional reduction of electricity consumption

- (82) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU and the possibilities set out in this Communication, temporary support might be needed to achieve the reduction of electricity consumption covered by Articles 3 and 4 of Regulation (EU) 2022/1854¹³³. That support might help alleviate the exceptional increase in electricity prices by reducing consumption for more expensive electricity generation technologies (presently based on gas). Therefore, it is equally important to maintain incentives for existing electricity consumption reductions and to ensure consistency with the gas demand reduction targets laid down in Regulation (EU) 2022/1369¹³⁴. In view of the differences across Member States, guidance is needed to ensure that flexibility is framed by criteria aimed at ensuring a level-playing field and the preservation of the integrity of the single market.
- (83) The Commission will consider compatible with the internal market on the basis of Article 107(3)(b) TFEU aid for reduction of electricity consumption, provided the following cumulative conditions are met:
- a. the aid must provide financial compensation only when such compensation is paid for additional electricity not consumed compared to the expected consumption ('counterfactual') in the hour concerned without the competitive bidding process referred in point 83(e) ('additional consumption reduction'). In order to determine the additional consumption reduction, different methodologies can be used. To ensure that aid is only granted for additional demand reduction, Member States should in general take into account incentives from higher energy prices, any incentives from other support payments and schemes, weather conditions, and gaming risks;

¹³³ Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 261I, 7.10.2022, p. 1).

¹³⁴ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, (OJ L 206, 8.8.2022, p. 1).

- b. the aid must be designed to primarily contribute to reaching an electricity consumption reduction target set in Articles 3 and 4 of Regulation (EU) 2022/1854¹³⁵. If the aid is designed to go beyond the targets, the Member State must demonstrate the existence of additional benefits of the aid (for example, reduced energy system costs or reduced gas consumption), which are necessary¹³⁶ and proportionate to remedy the serious disturbance of the economy while preserving the internal market;
- c. the aid must be granted on the basis of a scheme with an estimated capacity volume and budget;
- d. aid may be granted in various forms including direct grants, loans¹³⁷ and guarantees¹³⁸;
- e. the aid must be granted in a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding. If a risk of overcompensation is identified, aid must be designed in a way that allows addressing windfall profits, such as by putting in place a claw-back mechanism defined ex-ante;
- f. the competitive bidding process(es) should in principle be open to all possible ways to achieve additional consumption reduction, in particular:
 - i. consumers shifting or avoiding electricity consumption;
 - ii. behind-the-meter storage, to reduce consumption during peak hours (unless aid would not lead to any additional consumption reduction); and
 - iii. behind-the-meter electricity generation assets that do not use gas as fuel. Member States may choose to exclude generation based on other fossil fuels;
- g. with respect to point 83(f), schemes might be limited to one or several categories of beneficiaries in one of the following circumstances:
 - i. where differences in the characteristics (e.g. duration, frequency of activation) of the services that can be offered by potential beneficiaries are such that offers per MWh cannot be considered comparable;
 - ii. where Member States can demonstrate to the Commission that competition would not be unduly distorted; or
 - iii. to ensure timely implementation (e.g. by extending existing schemes);

In any case, the schemes must not include any artificial limitation or discrimination. In accordance with Article 17 of Directive (EU) 2019/944¹³⁹,

¹³⁵ Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 261I, 7.10.2022, p. 1).

¹³⁶ Such aid will generally be deemed necessary if it contributes to achieving a reduction in gas consumption.

¹³⁷ When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

¹³⁸ When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

schemes must not be unduly limited to specific customers or customer groups, including aggregators;

- h. the eligibility criteria for participation in the competitive bidding process(es) must be transparent, objective and non-discriminatory. Beneficiaries must already have appropriate electricity metering¹⁴⁰ or commit to install it before delivering the additional consumption reduction. A minimum bid size requirement for beneficiaries may apply for reasons of administrative simplification; in this case, the minimum bid size must not be higher than 10MW and aggregation to reach the threshold must be allowed;
- i. to enable beneficiaries to accurately price their offers, clear and objective criteria must be defined and must describe when the beneficiary's additional consumption reduction will be activated. However, sufficient safeguards – for example some randomisation of activation – may need to be put in place to avoid creating gaming incentives such as the artificial inflation of counterfactuals;
- j. to avoid negative consequences on gas consumption, beneficiaries should commit that their additional electricity consumption reduction will not lead to increase their overall gas consumption. In addition, for aid reducing electricity consumption during peak hours, to deliver the benefits of moving electricity from peak to “off-peak” hours¹⁴¹ while avoiding to hamper achieving the target to reduce overall electricity consumption, beneficiaries should commit not to consume more than 150% “off peak” of the compensated “peak” electricity consumption reduction;
- k. within the competitive bidding process, beneficiaries must be selected based on the lowest unit cost of additional consumption reduction (in EUR/MWh or equivalent¹⁴²). Member States may introduce additional objective, transparent and non-discriminatory ranking criteria to promote greener technologies necessary to support the delivery of the Union's environmental protection objectives;
- l. the remuneration must be granted to each beneficiary based on the actual additional consumption reduction achieved (as opposed to the additional consumption reduction the beneficiary committed to achieve);
- m. the aid must not unduly distort the proper functioning of the internal market in electricity. Member States may open the aid to cross-border participation;

¹³⁹ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) (OJ L 158, 14.6.2019, p. 125).

¹⁴⁰ *I.e.* metering that measures separately consumption when additional demand reduction is required and when it is not.

¹⁴¹ “Off peak” must be defined to generally avoid electricity consumption when gas is used for power generation.

¹⁴² For example, when beneficiaries are selected based on capacity price (EUR/MW) for consumption reduction during a fixed number of hours. In this case, the number of hours must be defined ex-ante.

- n. the additional consumption reduction which is compensated must take place within the period of application of the relevant Article(s) of Regulation (EU) 2022/1854¹⁴³, or in case of aid going beyond those targets, by 31 December 2023;
- o. cumulation with other State aid measures is possible, so long as overcompensation is avoided by ensuring for example that aid is granted through an open competitive bidding process. In any event, aid cannot be granted if it covers eligible costs that are already covered by other State aid measures.

2.8. Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy

- (84) In view of the need to accelerate the economic transition and overcome the current crisis, Member States may envisage supporting private investment to address the productive investment gap in sectors strategic for the transition towards a net-zero economy and provide incentives for their fast deployment also considering global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside the EEA.
- (85) The Commission will consider aid for investment projects with strategic importance for the transition towards a net-zero economy compatible with the internal market under Article 107(3)(c) TFEU provided the following conditions are met:
 - a. The aid is granted to incentivise:
 - i. the production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, electrolyzers, and equipment for carbon capture usage and storage (CCUS); or
 - ii. the production of key components designed and primarily used as direct input for the production of the equipment defined under (i); or
 - iii. the production or recovery of related critical raw materials necessary for the production of the equipment and key components defined in (i) and (ii) above;
 - b. the aid is granted on the basis of a scheme¹⁴⁴ with an estimated budget;
 - c. the aid is granted by 31 December 2025;
 - d. the beneficiary must apply for aid before the start of works¹⁴⁵ and must provide the required information in Annex II of this Communication to the Member State¹⁴⁶.

¹⁴³ Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 261I, 7.10.2022, p. 1).

¹⁴⁴ Such a scheme can cover projects submitted and selected under the Innovation Fund, insofar as the applicable conditions under point 85 are met.

¹⁴⁵ ‘Start of works’ means either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

- e. the aid may be granted in the form of direct grants, or other forms such as tax advantages, subsidised interest rates on new loans or guarantees on new loans provided the nominal amount of the tax advantage or the nominal amount of the underlying new loan does not exceed the applicable aid intensity and overall aid amounts under this point. When the guarantees or loans are channelled through credit institutions and other financial institutions as financial intermediaries, the conditions included in points 67(i) and 70(g) shall be respected in order to ensure that the aid granted under this section is passed on directly, to the largest extent possible, to the final beneficiaries;
- f. the eligible costs relate to all investment costs in tangible (such as land, buildings, plant, equipment, machinery) and intangible assets (such as patent rights, licences, know-how or other intellectual property) required for the production or recovery of the goods listed in point 85(a). Intangible assets must: 1) remain associated with the area concerned and must not be transferred to other areas; 2) be used primarily in the relevant production facility receiving the aid; 3) they must be amortisable; 4) be purchased under market conditions from third parties unrelated to the buyer; 5) be included in the assets of the undertaking that receives the aid; and 6) must remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs);
- g. the aid intensity may not exceed 15% of the eligible costs and the overall aid amount may not exceed EUR 150 million per undertaking per Member State. However,
 - i. for investments in assisted areas designated in the applicable regional aid map for the Member State concerned in accordance with Article 107(3)(c) TFEU ('c' areas), the aid intensity may be increased to 20% of the eligible costs and the overall aid amount may not exceed EUR 200 million per undertaking per Member State;
 - ii. for investments in assisted areas designated in the applicable regional aid map for the Member State concerned in accordance with Article 107(3)(a) TFEU ('a' areas) the aid intensity may be increased to 35% of the eligible costs and the overall aid amount may not exceed EUR 350 million per undertaking per Member State;
- h. when the aid is granted in form of tax advantages, loans or guarantees, aid intensities set out in point 85(g) may be increased by 5 percentage points. For investments made by small enterprises, the aid intensities may be further increased by 20 percentage points and for those investments made by medium-sized enterprises, the aid intensities may be increased by 10 percentage points;
- i. the beneficiary must commit to maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment should 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 minimum period. However, no further aid may be awarded to replace that plant or equipment;

¹⁴⁶ Such aid applications may be based on any legal basis as long as the amount of aid to be granted under section 2.8 of this Communication does not exceed the amount initially applied for.

- j. before granting the aid and on the basis of the information provided by the beneficiary in Annex II of this Communication and the commitments provided under point 85(k), the granting authority must verify the concrete risks of the productive investment not taking place within the EEA and that there is no risk of relocation within the EEA in the sense of point 85(k);
 - k. the aid may not be provided to facilitate relocation¹⁴⁷ of production activities between Member States. For this purpose, the beneficiary has to:
 - i. confirm that in the two years preceding the application for aid, it has not carried out a relocation to the establishment in which the aided investment is to take place; and
 - ii. commit not to carry out such relocation up to a period of two years after completion of the investment;
 - l. the aid may not be granted to undertakings in difficulty¹⁴⁸;
 - m. the aid may be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules. Under no circumstances may the total aid amount exceed 100% of the eligible costs;
 - n. Member States may consider including in a non-discriminatory way requirements related to environmental protection such as those listed in point 37 of this Communication or related to social protection or employment conditions when notifying schemes under this point;
 - o. Member States must inform the Commission within 60 days from the moment of granting the aid, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary in Annex II to this Communication.
- (86) Exceptionally, by derogation from point 85(b) and on the basis of individual notifications, for the production of the relevant goods for the transition towards a net-zero economy as defined in point 85(a) of this Communication, the Commission may approve on the basis of Article 107(3)(c) TFEU individual aid up to the amount of subsidy¹⁴⁹, which the beneficiary could demonstrably receive for an equivalent investment in a third country jurisdiction outside the EEA, provided the following conditions are met:

¹⁴⁷ 'Relocation' means a transfer of the same or a similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the aid beneficiary in the EEA.

¹⁴⁸ As defined under the Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, ([OJ C 249, 31.7.2014, p. 1](#)).

¹⁴⁹ The notified aid and the subsidy which the beneficiary could demonstrably receive in a third country jurisdiction outside EEA will be compared in discounted terms.

- a. The aid incentivises the beneficiary to locate the investment project or to trigger linked investment projects¹⁵⁰ necessary for the production of the relevant goods defined in point 85(a) either:
 - i. fully in an assisted area as defined in the applicable regional aid map; or
 - ii. in at least three EEA Member States where a significant part of the capital investment takes place in at least two assisted areas. An important part of such significant investment should take place in an ‘a’ area as defined in the applicable regional aid map(s);
- b. The aid is granted by 31 December 2025;
- c. The beneficiary must commit to use for the production of goods defined in point 85(a) of this Communication the latest commercially available state-of-the-art production technology from an environmental emissions perspective;
- d. The beneficiary must apply for aid before the start of works¹⁵¹ and must provide the required information in Annex II of this Communication and supporting relevant documents to the Member State.¹⁵² The beneficiary must provide solid evidence of subsidies it would credibly receive in a non-EEA jurisdiction for a similar project and must demonstrate that without the aid the planned investment would not take place in the EEA^{153, 154}. In addition, the beneficiary must provide evidence that the aid does not create counter-cohesion effects¹⁵⁵;

¹⁵⁰ Undertakings from all Member States which are active in the relevant value chain must be given a genuine opportunity to participate in an emerging project. Notifying Member States must demonstrate that such undertakings were informed of the possible emergence of a project, and of the commercial opportunities it could represent, for example by way of contacts, alliances, meetings, or match-making events, also involving SMEs and start-ups, while paying due regard to commercial secrecy.

¹⁵¹ As defined in footnote 145.

¹⁵² Such aid applications may be based on any legal basis as long as the amount of aid to be granted under section 2.8 of this Communication does not exceed the amount initially applied for.

¹⁵³ Relevant documentary evidence to underpin the counterfactual described in the Annex II of this Communication needs to be credible, *i.e.* genuine and relevant to the decision-making factors prevalent at the time of the decision by the aid beneficiary regarding the investment. Member States are invited to draw on genuine and official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Those documents need to be contemporary to the decision-making process concerning the investment or its location. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents submitted to an investment committee and that elaborate on investment scenarios, or documents provided to the financial institutions could help Member States to demonstrate the incentive effect.

¹⁵⁴ In principle, aid amounts that exceed capital investment costs seem unlikely to be justifiable, given that in such cases, the investments are likely to take place in the EEA also with lower aid amounts.

¹⁵⁵ Where several locations in the EEA are under consideration for the investment, State aid under this point may not be granted to attract the investment to an area with a regional aid intensity as specified in the applicable regional aid map that is lower than in alternative EEA areas under consideration, since this would constitute a negative effect on competition and cohesion that is unlikely to be compensated by any positive effect. This would not apply if the beneficiary can demonstrate that the investment would not otherwise happen in such alternative EEA areas and instead be diverted to a third country. In cases where the alternative EEA locations are of the same regional aid intensity, State aid under this point may be granted if the beneficiary demonstrates that the location was chosen based on objective criteria irrespective of State aid.

- e. The aid may not exceed the minimum amount needed to incentivise the aid beneficiary to locate the investment in the area concerned in the EEA (funding gap)¹⁵⁶;
- f. The aid may not be provided to facilitate relocation¹⁵⁷ of production activities between Member States. When evaluating the notifiable measures, the Commission will request all necessary information to consider whether the State aid is likely to result in a substantial loss of jobs in existing locations within the EEA. In this situation, and if the investment enables the aid beneficiary to relocate an activity to the target area, if there is a causal link between the aid and the relocation, this constitutes a negative effect that is unlikely to be compensated by any positive effects;
- g. The beneficiary must commit to maintain the investment in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment should 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 minimum period. However, no further aid may be awarded to replace that plant or equipment.
- h. the aid under this section may not be granted to undertakings in difficulty¹⁵⁸.

3. MONITORING AND REPORTING

- (87) Member States must publish relevant information on each individual aid above EUR 100 000¹⁵⁹ granted under this Communication, and above EUR 10 000¹⁶⁰ in the primary agriculture and in the fisheries sectors, on the comprehensive State aid

¹⁵⁶ This funding gap is determined by the difference between the net present value of expected cash-flows (including the investment and operation) of the aided investment and the net present value of the expected cash-flows of the counterfactual investment in a non-EEA jurisdiction which the aid beneficiary would credibly carry out in the absence of aid in the EEA (notably including the aid that the beneficiary would credibly receive in the non-EEA jurisdiction in the counterfactual). Both scenarios must be sufficiently proven, *i.e.* using realistic assumptions as part of a credible business plan. In principle, it is unlikely that the Commission will consider compatible with Article 107(3)(c) TFEU, aid amounts exceeding the capital investment costs necessary to locate the projects in the area concerned considering that such aid is unlikely to have an incentive effect.

¹⁵⁷ As defined in footnote 147.

¹⁵⁸ As defined under the Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([OJ C 249, 31.7.2014, p. 1](#)).

¹⁵⁹ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III to Commission Regulation (EU) No 702/2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

¹⁶⁰ Referring to information required in Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

website or Commission's IT tool¹⁶¹ within 12 months from the moment of granting, except for aid granted under section 2.8 for which Member States will have to publish the relevant information within 6 months from the moment of granting.

- (88) For aid measures under section 2.4. of this Communication, when the overall aid per undertaking per Member State exceeds EUR 50 million, Member States must include in their schemes a requirement that the beneficiary must submit to the granting authority, within one year from the moment of granting the aid, a plan that specifies how the beneficiary will reduce the carbon footprint of its energy consumption or how it will implement any of the requirements related to environmental protection or security of supply described in point 37 of this Communication. This requirement applies as from 1 January 2023.
- (89) Member States must submit annual reports to the Commission¹⁶².
- (90) Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.
- (91) The Commission may request additional information regarding the aid granted, in particular, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.
- (92) In order to monitor the implementation of this Communication, the Commission may request Member States to provide aggregate information on the use of State aid measures to remedy the serious disturbance of the economy due to the current crisis.

4. FINAL PROVISIONS

- (93) The Commission applies this Communication from 9 March 2023. The Commission applies the provisions of this Communication to all measures notified as of 9 March 2023, as well as to measures notified prior to that date.
- (94) This Communication replaces the Temporary Crisis Framework adopted on 28 October 2022¹⁶³ ('previous Temporary Crisis Framework'). The previous Temporary Crisis Framework is withdrawn with effect from 9 March 2023. The previous Temporary Crisis Framework already replaced the Temporary Crisis Framework adopted on 23 March 2022¹⁶⁴ as amended on 20 July 2022¹⁶⁵.
- (95) Overall, aid granted under sections 2.1 to 2.3 of the previous Temporary Crisis Frameworks and aid granted under the same respective sections of this

¹⁶¹ The State aid transparency public search gives access to State aid individual award data provided by Member States in compliance with the European transparency requirements for State aid and can be found at <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

¹⁶² OJ L 140, 30.4.2004, p. 1.

¹⁶³ OJ C 426, 9.11.2022, p. 1.

¹⁶⁴ OJ C 131I, 24.3.2022, p. 1.

¹⁶⁵ OJ C 280, 21.7.2022, p. 1.

Communication cannot exceed the aid ceilings provided in the respective sections of this Communication at any point in time. As regards section 2.4, aid granted under the previous Temporary Crisis Frameworks and aid granted under this Communication cannot exceed the aid ceilings provided by this Communication for the same eligible period. Aid granted under sections 2.5 and 2.6 of the previous Temporary Crisis Frameworks cannot be cumulated with aid granted under the same respective sections of this Communication if it covers the same eligible costs.

- (96) In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid¹⁶⁶, the Commission applies this Communication to non-notified aid if the aid is granted as of 9 March 2023.
- (97) In all other cases, the Commission will apply the rules laid down in the Framework in force when the aid was granted.
- (98) The Commission will review all sections under this Communication before 31 December 2023 on the basis of important competition or economic considerations, as well as the international developments. Where helpful, the Commission may also provide further clarifications on its approach to particular issues.
- (99) The Commission, in close cooperation with the Member States concerned, ensures swift assessment of measures upon clear and complete notification of measures covered by this Communication. Member States should inform the Commission of their intentions and notify plans to introduce such measures as early and comprehensively as possible. The Commission will provide guidance and assistance to Member States in this process.

¹⁶⁶ OJ C 119, 22.5.2002, p. 22.

ANNEX I

Particularly affected sectors and sub-sectors¹⁶⁷

	NACE code	Description
1	0510	Mining of hard coal
2	0610	Extraction of crude petroleum
3	0710	Mining of iron ores
4	0729	Mining of other non-ferrous metal ores
5	0891	Mining of chemical and fertiliser minerals
6	0893	Extraction of salt
7	0899	Other mining and quarrying n.e.c.
8	1041	Manufacture of oils and fats
9	1062	Manufacture of starches and starch products
10	1081	Manufacture of sugar
11	1106	Manufacture of malt
12	1310	Preparation and spinning of textile fibres
13	1330	Finishing of textiles
14	1395	Manufacture of non-wovens and articles made from non-wovens, except apparel
15	1411	Manufacture of leather clothes
16	1621	Manufacture of veneer sheets and wood-based panels
17	1711	Manufacture of pulp
18	1712	Manufacture of paper and paperboard
19	1910	Manufacture of coke oven products
20	1920	Manufacture of refined petroleum products

¹⁶⁷ The (sub)sectors listed by reference to their emissions intensity and trade intensity correspond to those listed in Commission Delegated Decision (EU) 2019/708 of 15 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council concerning the determination of the sectors and subsectors deemed at risk of carbon leakage for the period 2021 to 2030, (OJ L 120/20, 8.5.2019).

21	2011	Manufacture of industrial gases
22	2012	Manufacture of dyes and pigments
23	2013	Manufacture of other inorganic basic chemicals
24	2014	Manufacture of other organic basic chemicals
25	2015	Manufacture of fertilisers and nitrogen compounds
26	2016	Manufacture of plastics in primary forms
27	2017	Manufacture of synthetic rubber in primary forms
28	2060	Manufacture of man-made fibres
29	2110	Manufacture of basic pharmaceutical products
30	2311	Manufacture of flat glass
31	2313	Manufacture of hollow glass
32	2314	Manufacture of glass fibres
33	2319	Manufacture and processing of other glass, including technical glassware
34	2320	Manufacture of refractory products
35	2331	Manufacture of ceramic tiles and flags
36	2332	Manufacture of bricks, tiles and construction products, in baked clay
37	2341	Manufacture of ceramic household and ornamental articles
38	2342	Manufacture of ceramic sanitary fixtures
39	2351	Manufacture of cement
40	2352	Manufacture of lime and plaster
41	2399	Manufacture of other non-metallic mineral products n.e.c.
42	2410	Manufacture of basic iron and steel and of ferro-alloys
43	2420	Manufacture of tubes, pipes, hollow profiles and related fittings, of steel
44	2431	Cold drawing of bars
45	2442	Aluminium production

46	2443	Lead, zinc and tin production
47	2444	Copper production
48	2445	Other non-ferrous metal production
49	2446	Processing of nuclear fuel
50	2451	Casting of iron
	Prodcom code	Description
1	81221	Kaolin and other kaolinic clays
2	10311130	Frozen potatoes, prepared or preserved (including potatoes cooked or partly cooked in oil and then frozen; excluding by vinegar or acetic acid)
3	10311300	Dried potatoes in the form of flour, meal, flakes, granules and pellets
4	10391725	Concentrated tomato puree and paste
5	105122	Whole milk powder
6	105121	Skimmed milk powder
7	105153	Casein
8	105154	Lactose and lactose syrup
9	10515530	Whey and modified whey in powder, granules or other solid forms, whether or not concentrated or containing added sweetening matter
10	10891334	Bakers' yeast
11	20302150	Vitrifiable enamels and glazes, engobes (slips) and similar preparations for ceramics, enamelling or glass
12	20302170	Liquid lustres and similar preparations; glass frit and other glass in powder; granules or flakes
13	25501134	Open die forged ferrous parts for transmission shafts, camshafts, crankshafts and cranks etc.

Annex II

Information to be included in the application form for aid under section 2.8 of this Communication

1. Information about the aid beneficiary:

- Name, registered address of main seat, main sector of activity (NACE code).
- Declaration that the firm is not in difficulty, as defined under the rescue and restructuring guidelines.
- For aid granted under a scheme under point 85: non-relocation declaration and commitments listed in point 85(k)

2. Information about the investment to be supported:

- Short description of the investment.
- Short description of expected positive effects for the area concerned (for example, number of jobs created or safeguarded, R&D&I activities, training, creation of a cluster and project's possible contribution to the green and digital transition of the regional economy).
- Applicable legal basis (national, EU or both).
- Planned start of works and completion of the investment.
- Location(s) of the investment.
- For aid under point 86: information on the triggered linked investments in other Member States in line with point 86 (a): location and amount of the triggered investments. Provide information on the links between the investment to be supported and the triggered investments.

3. Information about the financing of the investment:

- Investment costs and other associated costs.
- Total eligible costs.
- Aid amount needed to carry out the investment in the area concerned.
- Aid intensity.
- For aid under point 86: a Funding Gap analysis, including the business plan and Net Present Value calculations for the factual and counterfactual scenarios, with estimated investment costs, operating costs, revenues and terminal value in both scenarios (in excel format), with supporting evidence.

4. Information on the need for aid and its expected impact:

- Short explanation of the need for aid and its impact on the investment decision or location decision. This must include an explanation of the alternative investment or location decision if aid is not granted.
- For aid under point 86, the beneficiary must provide:

- solid evidence of subsidies it would credibly receive in a non-EEA jurisdiction for a similar project included in the counterfactual scenario
- evidence that without the aid the planned investment would not take place in the EEA.
- evidence that the aid does not create counter-cohesion effects in the sense of point 86 (d).



State aid: Commission amends General Block Exemption rules to further facilitate and speed up green and digital transition

Brussels, 9 March 2023

The European Commission has endorsed a targeted amendment to the [General Block Exemption Regulation](#) ('GBER') to further facilitate, simplify and speed up support for the EU's green and digital transitions.

Together with the new [Temporary Crisis and Transition Framework](#), this targeted amendment aims at making it easier for the Member States to grant necessary support for key sectors in line with the [Green Deal Industrial Plan](#).

Green Deal GBER amendment

The GBER declares specific categories of State aid compatible with the Treaty on the Functioning of the European Union, provided that they fulfil certain conditions. It therefore exempts these categories from the requirement of prior notification to and approval by the Commission, enabling Member States to grant the aid directly and informing the Commission only *ex-post*.

Today's amendment grants Member States **more flexibility** to design and implement support measures in sectors that are key for the **transition to climate neutrality and to a net-zero industry**. It will help speeding up investment and financing for clean tech production in Europe, in line with the [Green Deal Industrial Plan](#).

The new rules reflect the recent changes to various sets of State aid Guidelines to ensure that the GBER remains fit for the green and digital transition.

They will also set the right foundations to tackle some of the economic effects stemming from Russia's war against Ukraine and contribute to the recovery of Europe's economy, affected also by the coronavirus pandemic and the high energy prices.

In particular, the revised rules:

- Increase and streamline the possibilities for **aid in the area of environmental protection and energy**, among others to support the rollout of renewable energy, decarbonisation projects, green mobility and biodiversity, as well as to facilitate investments in renewable hydrogen and to increase energy efficiency;
- Facilitate the implementation of certain **projects involving beneficiaries in several Member States**, such as Important Projects of Common European Interest ('IPCEI'), in the research and development field, by increasing the aid intensities as well as the notification thresholds;
- Extend the possibilities for **training and reskilling** across sectors by exempting from notification training aid below €3 million;
- **Block exempt** aid measures set up by Member States to **regulate prices for energy** such as electricity, gas and heat produced from natural gas or electricity;
- Introduce a very significant **increase of notification thresholds** for **environmental aid** as well as for **Research, Development and Innovation ('RDI') aid**;
- Clarifies and streamlines the possibilities for **risk finance aid**, for small and medium-sized enterprises ('SMEs') and start-ups, as well as for financial products supported by the InvestEU Fund;
- **Prolongs** the GBER **until the end of 2026** for legal certainty and regulatory stability;
- **Increases the thresholds** in the GBER even beyond the areas under specific review to cater for the longer period of validity of the rules; and
- **Aligns** the provisions of the GBER with the new [Regional Aid Guidelines](#), the [Climate, Energy and Environmental State aid Guidelines](#), the [Risk Finance Guidelines](#), the [Research, Development and Innovation Framework](#) and the [Broadband Guidelines](#).

Next steps

Following today's endorsement by the Commission of the English text of the Regulation, the latter will be formally adopted in the coming weeks following the translation of the text in all official languages of the EU. It will then enter into force on the day following its publication in the Official Journal of the European Union. The text of the amending Regulation endorsed today is available [here](#).

Background

[Article 108\(3\)](#) of the Treaty on the Functioning of the European Union requires Member States to notify all State aid to the European Commission and to implement it only after the Commission's approval. The EU State aid [Enabling Regulation](#) allows the Commission to declare that certain categories of State aid are compatible with the Single Market and exempted from the notification obligation provided for in the Treaty.

The General Block Exemption Regulation allows Member States to implement certain aid measures directly, with full legal certainty. The 2014 [General Block Exemption Regulation](#) exempts certain categories of State aid from the requirement of prior notification to the Commission, when the benefits to society outweigh the possible distortions of competition. As a result, more than 90% of all new State aid measures excluding crisis measures are now implemented by Member States without the need for prior approval by the Commission. This is in line with the Commission's approach to focus on delivering more and faster, while doing less where it does not have an added value.

The fact that a State aid measure does not meet the criteria of the GBER does not mean that it is incompatible with EU state aid rules. It only means that the measure must be notified (prior to its implementation) to the Commission, which will then assess whether the State aid can be approved under other EU State aid rules.

In January 2019 the Commission launched an evaluation of certain State aid rules adopted as part of the 2014 [State aid Modernisation package](#). The evaluation [showed](#) that, overall, the State aid control system and rules are fit for purpose. However, it also showed that individual rules needed some adaptation, also in the light of the [European Green Deal](#) and the EU's [Industrial](#) and [Digital](#) Strategies, as well as further streamlining.

Therefore, to reflect the changes to the various sets of State aid Guidelines, in [October 2021](#) the Commission invited Member States and all other interested parties to comment on certain proposed amendments to the GBER. The proposal followed the amendment of the GBER that the Commission adopted in [July 2021](#) to align the relevant State aid rules with funding rules under the new Multiannual Financial Framework.

Today's amendment will help speeding up investment and financing for clean tech production in Europe, while protecting a level playing field in the Single Market.

IP/23/1523

Quotes:

Today's amendment to the General Block Exemption Regulation simplifies and speeds-up the granting of support for the EU's green and digital transition. It goes hand in hand with the new Temporary Crisis and Transition Framework to foster support measures in key sectors for the transition to a net-zero economy. The new set of rules facilitate the design and implementation of measures that promote innovation, competitiveness and sustainability, while protecting the level playing field in the Single Market.

Margrethe Vestager, Executive Vice-President in charge of competition policy - 09/03/2023

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20.3.2023 / 6605



EUROPEAN
COMMISSION

Brussels, 9.3.2023
C(2023) 1712 final

ANNEX

ANNEX

to the

COMMUNICATION TO THE COMMISSION

Approval of the content of a draft for a Commission Regulation amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty

ANNEX

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COMMUNICATION TO THE COMMISSION

Approval of the content of a draft for a Commission Regulation amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid¹, and in particular Article 1(1), points (a) and (b), thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Transparency of State aid is essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending. Given the importance of transparency and, in particular, to align the publication thresholds in Commission Regulation (EU) No 651/2014² with the new thresholds laid down in all recently revised Commission State aid Guidelines and Frameworks, the threshold above which the information referred to in Annex III on individual aid awards must be published should be set at EUR 100 000. This threshold should correspond to EUR 10 000 for beneficiaries active in primary agricultural production and for beneficiaries active in the fishery and aquaculture sector, other than those to which Section 2a applies, and EUR 500 000 for aid involved in financial products supported by the InvestEU fund under Section 16. For individual aid exceeding these thresholds, the information referred to in Annex III needs to be published within 6 months from the date the aid is granted. For aid not exceeding these thresholds, the publication of the information laid down in Article 9, paragraph 1, points (a) and (b) can take place at a later point in time.

¹ OJ L 248, 24.9.2015, p. 1.

² 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 (OJ L 187, 26.6.2014, p. 1).

- (2) To provide predicability and legal certainty for the implementation of the amendments to Regulation (EU) No 651/2014 introduced with this Regulation, in particular for State aid measures to support the green and digital transition, it is appropriate to extend the period of application of Regulation (EU) No 651/2014 by three years until 31 December 2026.
- (3) Where appropriate, adjustments to notification thresholds and aid amounts have been introduced to Sections under specific review as part of the current amendment, based on an assessment of market developments and the Commission's case practice. In light of the extended period of application of Regulation (EU) No 651/2014 since its adoption in 2014, in combination with current high inflation levels, it is appropriate to increase notification thresholds and maximum aid amounts also in Sections of Regulation (EU) No 651/2014 not subject to specific review. In that regard, the Commission considers that a general increase of 10% of notification thresholds and aid amounts for the remaining Sections of Regulation (EU) 651/2014 is appropriate in light of the time since their introduction and current inflation levels and will, therefore, not lead to competition distortions contrary to the common interest.
- (4) Following the adoption of the revised Guidelines on regional State aid for the period from 1 January 2022³, definitions and Articles related to regional aid in Commission Regulation (EU) No 651/2014 should be aligned to ensure consistency between the different sets of rules targeting the same objectives. Section 1 of Chapter III of Regulation (EU) No 651/2014 should also be adjusted to take into account changes in the market and in view of the Green deal⁴ and the European Climate Law objectives set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council.⁵ Operating aid to prevent and reduce depopulation should be extended to sparsely populated areas, in order to facilitate better support in areas facing demographic challenges. To facilitate the application of Regulation (EU) No 651/2014 for aided projects below EUR 50 million carried out by small and medium-sized enterprises ('SMEs'), the notification thresholds should be adjusted accordingly and clarified.
- (5) In line with the objectives of the SME Strategy for a sustainable and digital Europe⁶, the Commission would like to clarify that State aid granted for consultancy for SMEs may be granted in the form of vouchers, for instance to promote green consultancy services. Furthermore, when granting State aid, Member States may decide to apply simplified rules to SMEs with a view to reducing the administrative burden and facilitating the participation of SMEs in competitive bidding procedures.
- (6) According to the Communication on Shaping Europe's Digital Future and on a European Strategy for Data there is a need to ensure that digital solutions help Europe to pursue its own way towards a digital transformation that works for the benefit of people through respecting the European values. The New Industrial Strategy for Europe

³ Communication from the Commission, 'Guidelines on regional State aid', C(2021) 2594 (OJ C 153, 29.4.2021, p. 1).

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Social and Economic Committee and the Committee of the Regions, 'The European Green Deal', COM(2019) 640 final.

⁵ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

⁶ COM(2020) 103 final.

sets out that Europe needs research and technologies and a strong single market which brings down barriers and cuts red tape. It acknowledges that, stepping up investment in research, innovation, deployment and up-to-date infrastructure will help develop new production processes and create jobs in the process. In this regard, research projects and innovation support services include also the development or improvement of digital products, processes or services, in any area, technology, industry or sector (including, but not limited to, digital industries, digital infrastructures and technologies, such as super-computing, quantum technologies, block chain technologies, artificial intelligence, cyber security, big data and cloud technologies).

- (7) In order to speed up the implementation of certain innovative projects related to projects involving several Member States, it is appropriate to introduce higher notification thresholds and aid intensities for research and development projects delivering cross-border benefits in terms of effective collaborations and knowledge dissemination.
- (8) In light of the introduction of dedicated block exemptions for community-led local development ('CLLD'), designated as LEADER local development under the European Agricultural Fund for Rural Development, and European Innovation Partnership for agricultural productivity and sustainability ('EIP') Operational Group projects in Commission Regulation (EU) 2022/2472⁷, it is appropriate to, on the one hand, extend the scope of the current block exemption for CLLD projects under Regulation (EU) No 651/2014 beyond projects dedicated as LEADER and, on the other hand, to delete the block exemption for EIP projects under Regulation (EU) No 651/2014.
- (9) It is appropriate to include in the scope of Regulation (EU) No 651/2014 compatibility conditions for aid to microenterprises in the form of public interventions concerning the supply of electricity, natural gas or heat. Such measures must be in line with the applicable provisions of EU law when they qualify as public interventions in price setting. Such measures should neither discriminate between suppliers nor microenterprises and should result in a retail price above cost, at a level where effective competition between retailers can occur.
- (10) To mitigate the effects of the rise of energy prices following Russia's war of aggression against Ukraine, Council Regulation (EU) 2022/1854 exceptionally enables Member States to apply, on a temporary basis, measures of public intervention in price setting for the supply of electricity for SMEs, including obligations to supply below cost. Therefore, it is also appropriate to include in the scope of the Regulation (EU) No 651/2014 compatibility conditions for aid to SMEs in the form of temporary public interventions concerning the supply of electricity, gas or heat produced from natural gas, to mitigate the impact of price increases following Russia's war of aggression against Ukraine. Such measures should not discriminate between SMEs or suppliers or impose unfair costs on them. Suppliers should, therefore, be compensated for costs incurred supplying at regulated prices if the public intervention requires them to supply below cost. In order to avoid that such measures increase demand for electricity, natural gas or heat produced from natural gas or electricity, regulated prices should only cover a limited amount of consumption and should not result in an average price of supplies that is lower than the prices before the aggression against Ukraine.

⁷ Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 1).

- (11) Aid for the construction or upgrade of testing and experimentation infrastructures mainly addresses the market failure stemming from imperfect and asymmetric information or coordination failures. Contrary to research infrastructures, testing and experimentation infrastructures are used predominantly for economic activities and, more specifically, for the provision of services to undertakings. Constructing or upgrading a state of the art testing and experimentation infrastructure involves high up-front investment costs, which together with an uncertain client base, can render access to private financing difficult. Access to publicly funded testing and experimentation infrastructures must be granted on a transparent and non-discriminatory basis and on market terms to several users. To facilitate users' access to testing and experimentation infrastructures, their user fees can be reduced in compliance with other provisions of Regulation (EU) No 651/2014 or Commission Regulation (EU) No 1407/2013 (*de minimis* Regulation)⁸. If those conditions are not respected, the measure may entail State aid to the users of the infrastructure. In such situations, aid to the users or for the construction or upgrade is only exempted from the notification requirement if the aid to the users is granted in compliance with the applicable State aid rules. Multiple parties may also own and operate a given testing and experimentation infrastructure, and public entities and undertakings may also use the infrastructure collaboratively. Testing and experimentation infrastructures are also known as technology infrastructures.
- (12) Aid for innovation clusters aims at tackling market failures linked with coordination problems hampering the development of clusters, or limiting the interactions and knowledge flows within clusters. State aid can either support investment in open and shared infrastructures for innovation clusters, or support the operation of clusters, with a view to enhancing collaboration, networking and learning. Operating aid for innovation clusters should, however, only be allowed for a limited period not exceeding 10 years. To facilitate access to the innovation cluster facilities or participation in the innovation cluster's activities access can be offered at reduced prices in compliance with other provisions of Regulation (EU) No 651/2014 or the *de minimis* Regulation.
- (13) Aid for innovation activities is mainly targeted at market failures related to positive externalities (knowledge spill-overs), coordination difficulties and, to a lesser extent, asymmetric information. With respect to SMEs such innovation aid may be awarded for obtaining, validating and defending patents and other intangible assets, for the secondment of highly qualified personnel, and for acquiring innovation advisory and support services, for example those provided by research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters.
- (14) Backhaul networks are a prerequisite for the deployment of both fixed and mobile access networks in areas where there is either no such infrastructure or where no such infrastructure is likely to be developed in the near future. State aid granted to support the deployment of certain performant backhaul networks that benefit both fixed and mobile networks should be considered compatible with the internal market and be exempted from the notification requirement under certain conditions, in order to help bridge the digital divide in market failure areas, while limiting risks of distorting competition and crowding out private investment.

⁸ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

- (15) Further to the adoption of the revised Guidelines on State aid to promote risk finance investments for the period as from 2022,⁹ definitions and other legal provisions related to access to finance for SMEs in Regulation (EU) No 651/2014/EU should be aligned with the revised Guidelines to ensure consistency. SMEs are the backbone of Member States' economies, both in terms of employment and of economic dynamism and growth, and are therefore also central to the Union's economic development and resilience as a whole. They bring innovative solutions to address challenges like climate change, inefficient use of resources and loss of social cohesion, and they help spread this innovation supporting the green and digital transition and strengthening the Union's resilience or technological sovereignty. However, to be able to grow and unleash their full potential, SMEs need access to finance. Therefore, the Commission considers it appropriate to stimulate the creation of an efficient risk finance market, so that SMEs are able to access the necessary funding at each stage of their development. As long as such market is not yet fully established, aid for the access to finance for SMEs and start-ups addresses market failures or other relevant obstacles that prevent them from attracting the financing they require to develop to their full potential. SMEs, especially when they are young, or in new or high-technology sectors, are often unable to demonstrate their credit-worthiness to investors. The evaluation¹⁰ of the relevant rules carried out in 2019 and 2020, has confirmed that those market failures or other relevant obstacles persist, a situation that is likely to be worsened by the COVID-19 pandemic and the consequences of the current political and economic situation in Europe due to the Russian military aggression against Ukraine. To further facilitate the deployment of such aid to ensure SMEs' growth prospects, the overall resilience of the Union's economy and to provide more clarity, the structure and scope of the provisions on risk finance has been revised. Projects eligible for support by the Innovation Fund may qualify for a more permissive access to finance for 'innovative enterprises' as defined in Article 2, point 80.
- (16) Further to the adoption of the Guidelines on State aid for climate, environmental protection and energy applicable as from 27 January 2022,¹¹ definitions and other legal provision in Regulation (EU) No 651/2014 related to aid in the fields of environmental protection, including climate protection, and energy should be aligned to ensure consistency between the different sets of rules targeting the same objectives. The scope of Section 7 of Regulation (EU) No 651/2014 should be adjusted to take into account changes in the market and the Green Deal and the European Climate Law objectives, as well as measures provided for in the Commission's REPowerEU plan to address the impacts of Russia's aggression against Ukraine and to mitigate any negative effects on the accelerated green transition, including the provisions introduced to amend Regulation (EU) No 651/2014 in 2021¹². When designing their State aid measures, Member States can combine aid under different provisions of the GBER, provided that all the relevant conditions, including those on cumulation, are complied with.

⁹ Communication from the Commission - Guidelines on State aid to promote risk finance investments (OJ C508, 16.12.2021, p. 1).

¹⁰ Commission Staff Working Document on the Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance (SWD/2020/0257 final).

¹¹ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

¹² Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 270, 29.7.2021, p. 39).

- (17) Investment aid aimed at supporting the acquisition or the leasing of zero-emission vehicles or clean vehicles or the retrofitting of vehicles, allowing them to qualify as zero-emission vehicles or clean vehicles, contributes to the shift towards zero-emission mobility and to achieving the ambitious targets of the Green Deal, mainly the reduction of greenhouse gas emissions in the transport sector. In light of the experience gained by the Commission regarding State aid measures supporting clean mobility, it is appropriate to introduce specific compatibility conditions to ensure that the aid is proportionate and does not unduly distort competition by shifting demand away from cleaner alternatives. The scope of the provisions concerning investment aid for electric recharging and hydrogen refuelling infrastructure should be enlarged to also cover refuelling infrastructure supplying hydrogen that is not renewable, provided that a clear pathway towards decarbonisation of the hydrogen supplied exists. Moreover, aid for recharging and refuelling infrastructure should also be available for infrastructure that is not publicly accessible.
- (18) It is appropriate to include in the scope of Regulation (EU) No 651/2014 specific compatibility conditions for aid for hydrogen across sectors in line with the objectives of the Hydrogen strategy for a climate-neutral Europe¹³ and for storage.
- (19) The provisions of Regulation (EU) No 651/2014 concerning operating aid for the promotion of energy from renewable sources should be expanded for renewable energy communities, in accordance with Directive (EU) No 2018/2001 of the European Parliament and of the Council¹⁴. With respect to investment aid, renewable energy communities, along different types of undertakings, can take advantage of the relevant provisions of Regulation (EU) No 651/2014. In this context, renewable and citizen energy communities as defined in Directive (EU) 2019/944 of the European Parliament and of the Council¹⁵ may qualify as SMEs to the extent they comply with the requirements laid down in Annex I of Regulation (EU) No 651/2014.
- (20) It is appropriate to include in the scope of Regulation (EU) No 651/2014 compatibility conditions for investment aid for the rehabilitation of natural habitats and ecosystems, the protection and restoration of biodiversity and nature-based solutions for climate change adaptation and mitigation in line with the objectives of the Biodiversity Strategy for 2030¹⁶, the European Climate Law objectives set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council, the EU strategy for adaptation to climate change¹⁷ and the Communication on Sustainable Carbon Cycles¹⁸. Those conditions

¹³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Social and Economic Committee and the Committee of the Regions, 'A hydrogen strategy for a climate-neutral Europe', COM(2020) 301 final.

¹⁴ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

¹⁵ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.06.2019, p. 125).

¹⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'EU biodiversity Strategy for 2030 bringing nature back into our lives', COM/2020/380 final.

¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe – the new EU Strategy on Adaptation to Climate Change, COM/2021/82 final.

¹⁸ Communication from the Commission to the European Parliament and the Council, Sustainable Carbon Cycles, COM(2021) 800 final.

should be added to the existing provisions concerning aid for the remediation of contaminated sites. Investment aid in those areas should therefore be considered compatible with the internal market and be exempted from the notification requirement of Article 108(3) of the Treaty, under certain conditions. In particular, it is necessary to ensure compliance with the ‘polluter pays principle’, according to which the costs of measures to deal with pollution should be borne by the polluter who causes the pollution.

- (21) The provisions of Regulation (EU) No 651/2014 concerning investment aid for waste recycling and re-utilisation should be adapted and expanded to address developments in the market and, in accordance with the Circular Economy Action Plan¹⁹, to reflect the shift towards measures aimed at promoting resource efficiency and supporting the transition towards a circular economy. The replacement of primary raw materials or feedstock with secondary (re-used or recycled) or recovered raw materials or feedstock will reduce pressure on natural resources, create sustainable growth and jobs and will strengthen resilience.
- (22) It is necessary to include in the scope of Regulation (EU) No 651/2014 compatibility conditions for aid in the form of environmental tax or levy reductions. Environmental taxes or parafiscal levies are imposed in order to increase the costs of environmentally harmful behaviour, thereby discouraging such behaviour and increasing the level of environmental protection. Where environmental taxes or parafiscal levies could not be enforced without putting the economic activities of certain undertakings at risk, granting a more favourable treatment to some undertakings may allow to achieve a higher general level of contribution to the environmental taxes or parafiscal levies. Accordingly, in some circumstances, reductions in environmental taxes or levies can indirectly contribute to a higher level of environmental protection.
- (23) It is appropriate to apply the same conditions for aid in the form of reductions and exemptions in environmental taxes across all economic sectors unless special rules apply. Therefore, aid in the form of tax reductions for inland fishing and piscicultural works adopted by Member States pursuant to Article 15(1)(f) and Article 15(3) of Directive 2003/96/EC²⁰ will fall within the scope of Regulation (EU) 651/2014 upon the expiry of Article 56 of Commission Regulation (EU) 2022/2473²¹ on 30 June 2023.
- (24) With regard to investment aid for district heating and/or cooling systems, the compatibility conditions laid down in Article 46 of Regulation (EU) No 651/2014 on support for investments in district heating and/or cooling systems that are based on fossil fuels, notably on natural gas, as well as investments in or upgrades to distribution networks, should be adjusted to take into account the Green Deal and the European Climate Law objectives, and in particular the Sustainable Europe Investment Plan²².

¹⁹ Commission Communication – A new Circular Economy Action Plan For a cleaner and more competitive Europe, COM/2020/98 final.

²⁰ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

²¹ Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p 1).

²² Commission Communication - Sustainable Europe Investment Plan European Green Deal Investment Plan, COM/2020/21 final.

- (25) With regard to investments in energy infrastructure, the scope of Regulation (EU) No 651/2014 should include block exemptions for supporting investments not located in assisted areas. Furthermore, the compatibility conditions of Regulation (EU) No 651/2014 on the support to energy infrastructure investments, for natural gas, need to be adjusted to take into account the Green Deal objectives and to ensure necessary compliance with the 2030 and 2050 climate targets.
- (26) Given the specificities for funding of projects in the defence industry, where demand comes almost exclusively from Member States, which also control all acquisition of defence-related products and technologies, including exports, the functioning of the defence sector is unique and does not follow the conventional rules and business models that govern more traditional markets. In view of the sector specificities and of the rules under the European Defence Fund and the European Defence Industrial Development Programme, where maximum funding rates are set not to limit the overall public funding but to attract co-funding from Member States, the financial contributions made by Member States to those co-funded projects should be considered, under certain conditions, compatible with the internal market and exempted from the notification requirement. In particular, such co-funding can be declared compatible beyond the possibilities of the general provisions on aid for research and development projects, provided that beneficiaries pay a market price for any use for non-defence applications of the intellectual property rights or prototypes resulting from the project. In such situations it should, in addition, not be necessary to reassess eligibility conditions already assessed at trans-national level in accordance with the European Defence Fund or the European Defence Industrial Development Programme rules by the Commission assisted by independent experts prior to a research and development project's selection. Finally, Article 8 should be amended to allow for combinations of Union centrally managed funding and State aid of up to the total project costs.
- (27) Regulation (EU) No 651/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 651/2014 is amended as follows:

- (1) Article 1 is amended as follows:
- (a) in paragraph 2, point (a) is replaced by the following:
- “(a) schemes under Sections 1 (with the exception of Article 15), 2 (with the exception of Articles 19c and 19d), 3, 4, 7 (with the exception of Article 44) and 10 of Chapter III of this Regulation, if the average annual State aid budget per Member State exceeds EUR 150 million, from six months after their entry into force, as well as aid implemented in the form of financial products under Section 16 of Chapter III, if the average annual State aid budget per Member State exceeds EUR 200 million, from six months after their entry into force. For aid under Section 16 of Chapter III of this Regulation, only contributions by a Member State to the Member State compartment of the EU guarantee, referred to in Article 9(1), point (b), of Regulation (EU) 2021/523 of the European Parliament and the Council*, which are earmarked for a specific financial product shall be taken into account for assessing whether the average annual State aid budget of that Member State related to the financial product exceeds EUR

200 million. The Commission may decide that this Regulation shall continue to apply for a longer period to any of these aid schemes after having assessed the relevant evaluation plan notified by the Member State to the Commission, within 20 working days from the scheme's entry into force. Where the Commission has already extended the application of this Regulation beyond the initial six months as regards such schemes, Member States may decide to extend those schemes until the end of the period of application of this Regulation, provided that the Member State concerned has submitted an evaluation report in line with the evaluation plan approved by the Commission;

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

(b) in paragraph 3, points (a) and (b) are replaced by the following:

“(a) aid granted in the fishery and aquaculture sector, within the scope of Regulation (EU) No 1379/2013 of the European Parliament and of the Council* with the exception of:

- training aid;
- aid for SMEs' access to finance;
- aid in the field of research and development;
- innovation aid for SMEs;
- aid for disadvantaged workers and workers with disabilities;
- regional investment aid in outermost regions;
- regional operating aid schemes;
- aid for community-led local development ('CLLD') projects;
- aid to European Territorial Cooperation projects;
- as of 1 July 2023, aid in the form of reductions in environmental taxes under Article 15(1)(f) and 15(3) of Council Directive 2003/96/EC**;
- aid involved in financial products supported by the InvestEU Fund, except for operations listed in Article 1(1) of Commission Regulation (EU) No 717/2014***;
- for aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat referred to in Article 19c;
- for aid to SMEs in the form of temporary public interventions concerning the supply of electricity, gas or heat produced from natural gas or electricity to mitigate the impact of price increases following Russia's war of aggression against Ukraine referred to in Article 19d;

- (b) aid granted in the primary agricultural production sector, with the exception of regional investment aid in outermost regions, regional operating aid schemes, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid, aid for disadvantaged workers and workers with disabilities, aid to community-led local development (CLLD) projects, aid to European Territorial Cooperation projects, aid involved in financial products supported by the InvestEU Fund, aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat as referred to in Article 19c and aid to SMEs in the form of temporary public interventions concerning the supply of electricity, gas or heat produced from natural gas or electricity to mitigate the impact of price increases following Russia's war of aggression against Ukraine as referred to in Article 19d;

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

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

*** Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).";

(c) the following paragraph 6 is inserted:

"6. Section 7 of this Regulation shall not apply to State aid measures for production of nuclear energy.";

(2) Article 2 is amended as follows:

(a) in point (18), points (a) and (b) are replaced by the following:

"(a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME that fulfils the condition in Article 21(3), point (b), and qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I to Directive 2013/34/EU of the European Parliament and of the Council* and 'share capital' includes, where relevant, any share premium.

(b) In the case of a company where at least some of its members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME that fulfils the condition in Article 21(3), point (b), and qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of

accumulated losses. For the purposes of this provision, ‘a company where at least some of its members have unlimited liability for the debt of the company’ refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).”;

(b) point (20) is replaced by the following:

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

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

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

(c) point (27) is replaced by the following:

“(27) ‘assisted areas’ means areas designated in a regional aid map that has been approved in application of Article 107(3), points (a) and (c) of the Treaty and is in force at the time of the award of the aid;”;

(d) point (32) is replaced by the following:

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

(e) point (34) is replaced by the following:

“(34) ‘financial intermediary’ means any financial institution regardless of its form and ownership, including funds of funds, private investment funds, public investment funds, banks, micro-finance institutions and guarantee societies;”;

(f) the following points (39a) and (39b) are inserted:

“(39a) ‘arm's length’ means that the conditions of the transaction between the contracting parties do not differ from those which would be stipulated between independent undertakings and contain no element of collusion. Any transaction that results from an open, transparent and non-discriminatory procedure is considered as meeting the arm's length principle;

(39b) ‘written’ means any form of written document, including electronic documents, provided that such electronic documents are recognised as equivalent under the applicable administrative procedures and legislation in the Member State concerned;”;

(g) point (40) is deleted;

(h) points (42) and (43) are replaced by the following:

“(42) ‘regional operating aid’ means aid to reduce an undertaking's current expenditure, including categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but excluding depreciation charges and the costs of financing related to an investment that benefited from investment aid;

(43) ‘steel sector’ means the production of one or more of the following:

(a) pig iron and ferro-alloys:

pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high-carbon ferro-manganese, not including other ferro-alloys;

(b) crude and semi-finished products of iron, ordinary steel or special steel:

liquid steel cast or not cast into ingots, including ingots for forging semi-finished products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wide coils, with the exception of production of liquid steel for castings from small and medium-sized foundries;

(c) hot finished products of iron, ordinary steel or special steel:

rails, sleepers, fishplates, soleplates, joists, heavy sections of 80 mm and over, sheet piling, bars and sections of less than 80 mm and flats of less than 150 mm, wire rod, tube rounds and squares, hot-rolled hoop and strip (including tube strip), hot-rolled sheet (coated or uncoated), plates and sheets of 3 mm thickness and over, universal plates of 150 mm and over, with the exception of wire and wire products, bright bars and iron castings;

(d) cold finished products:

tinplate, terneplate, blackplate, galvanised sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;

(e) tubes:

all seamless steel tubes, welded steel tubes with a diameter of over 406.4 mm;”;

(i) the following point (43a) is inserted:

“(43a) ‘lignite’ means low-rank C or ortho-lignite and low-rank B or meta-lignite as defined by the international codification system for coal established by the United Nations Economic Commission for Europe;”;

(j) point (44) is deleted;

(k) point (45) is replaced by the following:

“(45) ‘transport sector’ means the transport of passengers by aircraft, maritime transport, road or rail and by inland waterway or freight transport services for hire or reward; more specifically, the ‘transport sector’ means the following activities in terms of the statistical classification of

economic activities (NACE Rev. 2), established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council*:

- (a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.32 Taxi operation, 49.39 Operation of teleferics, funiculars, ski and cable lifts if not part of urban or suburban transit systems, 49.42 Removal services, 49.5 Transport via pipeline;
- (b) NACE 50: Water transport;
- (c) NACE 51: Air transport, excluding NACE 51.22 Space transport;

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

(l) the following point (47a) is inserted:

“(47a) ‘completion of the investment’ means the moment when the investment is considered by the national authorities as completed or, in the absence thereof, three years after the start of works;”;

(m) points (49), (50) and (51) are replaced by the following:

“(49) ‘initial investment’ means one of the following:

- (a) an investment in tangible and intangible assets related to one or more of the following:
 - the setting-up of a new establishment;
 - the extension of the capacity of an existing establishment;
 - the diversification of the output of an establishment into products or services not previously produced in the establishment; or
 - a fundamental change in the overall production process of the product(s) or the overall provision of the service(s) concerned by the investment in the establishment;
- (b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased. The sole acquisition of the shares of an undertaking does not qualify as initial investment.

A replacement investment thus does not constitute an initial investment.

(50) ‘same or a similar activity’ means an activity in the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities (NACE Rev. 2);

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

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

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

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

(n) points (72) and (73) are replaced by the following:

“(72) ‘independent private investor’ means an investor who is private and independent, as defined in this point. ‘Private’ investors mean investors who, irrespective of their ownership structure, pursue a purely commercial interest, use their own resources and bear the full risk in respect of their investment, and include, in particular: credit institutions investing at own risk and from own resources, private endowments and foundations, family offices and business angels, corporate investors, insurance undertakings, pension funds, academic institutions, as well as natural persons who either conduct an economic activity or not. The European Investment Bank, the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a legal entity that carries out financial activities on a professional basis which has been given a mandate by a Member State or a Member State’s entity at central, regional or local level to carry out development or promotional activities (national promotional bank or another promotional institution), will not be considered private investors for the purposes of this definition. ‘Independent’ investor means an investor that is not a shareholder of the eligible undertaking in which it invests. In the context of follow-on investments, an investor remains ‘independent’ if it was considered as an independent investor in a previous investment round. Upon the creation of a new company, any private investors, including the founders, of such new company, are considered to be independent from that company;

(73) ‘natural person’ for the purpose of Articles 21a and 23 means a person other than a legal entity and who is not an undertaking for the purposes of Article 107(1) of the Treaty;”;

(o) point (79) is replaced by the following:

“(79) ‘entrusted entity’ means the European Investment Bank and the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a legal entity that carries out financial activities on a professional basis which has been given mandate by a Member State or a Member State’s entity at central, regional or local level to carry out development or promotional activities (a promotional bank or another promotional institution). The entrusted entity can be selected or directly appointed in accordance with the provisions of Directive 2014/24/EU of the European Parliament and of the Council* or in accordance with Article 38(4), point (b)(iii), of Regulation (EU) No 1303/2013 of the European Parliament and of the Council** or Article 59(3) of Regulation (EU) 2021/1060 of the European Parliament and of the Council***, whichever is applicable;

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

** Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

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

(p) point 80 is replaced by the following:

“(80) ‘innovative enterprise’ means an enterprise that meets one of the following conditions:

- (a) it can demonstrate, by means of an evaluation carried out by an external expert, that it will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure;
- (b) its research and development costs represent at least 10 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor;
- (c) in the three years preceding the granting of the aid: (i) it has been awarded a Seal of Excellence quality label by the European Innovation Council in accordance with the Horizon 2020 work programme 2018-2020 adopted by Commission Implementing Decision C(2017)7124* or with Articles 2(23) and 15(2) of Regulation (EU) 2021/695 of the European Parliament and of the Council**; or (ii) it has received an investment by the European Innovation Council Fund, such as an investment in the context of the Accelerator Programme as referred to in Article 48(7) of Regulation (EU) 2021/695;
- (d) in the three years preceding the granting of the aid: (i) it has participated in any action of the Commission’s space initiative ‘CASSINI’ (such as the Business Accelerator or the Matchmaking)***; or (ii) it has received investment from the CASSINI Seed and Growth Funding Facility, or the InnovFin Space Equity Pilot; or (iii) it has been awarded a CASSINI Prize; or (iv) it has been granted funding in accordance with Regulation (EU) 2021/695 in the space research area resulting in the creation of a start-up; (v) or has been granted funding as a beneficiary of a research and development action under the European Defence Fund in accordance with Regulation (EU) 2021/697 of the European Parliament and of the Council ****; or (vi) has been granted funding under the European Defence Industrial Development Programme (Regulation (EU) 2018/1092)*****;

* Commission Implementing Decision C(2017)7124 of 27.10.2017 on the adoption of the work programme for 2018-2020 within the framework of the Specific Programme Implementing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and on the financing of the work programme for 2018.

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

*** The CASSINI initiative, first announced in the ‘SME Strategy for a sustainable and digital Europe’ (COM(2020) 103 final of 10.3.2020), is a collection of concrete actions whose aims include easing access to risk capital for SMEs active in the space sector to fund their expansion.

**** Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 (OJ L 170, 12.5.2021, p. 149);

***** Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry (OJ L 200, 7.8.2018, p. 30).”;

(q) point (81) is replaced by the following:

“(81) ‘alternative trading platform’ means a multilateral trading facility as defined in Article 4(1), point (22) of Directive 2014/65/EU of the European Parliament and of the Council* where at least 50 % of the financial instruments admitted to trading are issued by SMEs;

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

(r) points (85) and (86) are replaced by the following:

“(85) ‘industrial research’ means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or aimed at bringing about a significant improvement in existing products, processes or services, including digital products, processes or services, in any area, technology, industry or sector (including, but not limited to, digital industries and technologies, such as super-computing, quantum technologies, block chain technologies, artificial intelligence, cyber security, big data and cloud technologies).

Industrial research comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation;

(86) ‘experimental development’ means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services, including digital products, processes or services, in any area, technology, industry or sector (including, but not limited to, digital industries and technologies, such as for example super-computing, quantum technologies, block chain technologies, artificial intelligence, cyber security, big data and cloud or edge technologies). This may also encompass, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services.

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical

improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements;”;

(s) point (89) is deleted;

(t) the following point (90a) is inserted:

“(90a) ‘Non-defence applications’ in the meaning of Article 25e refers to applications in products other than defence-related products listed in the Annex of Directive 2009/43/EC of the European Parliament and the Council*.

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

(u) point (92) is replaced by the following:

“(92) ‘innovation clusters’ means structures or organised groups of independent parties (such as innovative start-ups, small, medium and large enterprises, as well as research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures, Digital Innovation Hubs, non-for-profit organisations and other related economic actors) designed to stimulate innovative activity and new ways of collaboration, such as by digital means, by sharing and/or promoting the sharing of facilities and exchange of knowledge, and expertise and by contributing effectively to knowledge transfer, networking, information dissemination and collaboration among the undertakings and other organisations in the cluster. Digital Innovation Hubs (including European Digital Innovation Hubs funded under the centrally managed Digital Europe Programme established by Regulation (EU) 2021/694 of the European Parliament and of the Council*) are entities whose aim is to stimulate the broad uptake of digital technologies, such as artificial intelligence, cloud, edge and high-performance computing and cybersecurity, by industry (in particular by SMEs) and public sector organisations. Digital Innovation Hubs may qualify as an innovation cluster by themselves in the meaning of this Regulation.

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

(v) points (94) to (97) are replaced by the following:

“(94) ‘innovation advisory services’ means consultancy, assistance or training in the fields of knowledge transfer, acquisition, protection or exploitation of intangible assets or the use of standards and regulations embedding them, as well as consultancy, assistance or training on the introduction or use of innovative technologies and solutions (including digital technologies and solutions);

(95) ‘innovation support services’ means the provision of office space, data banks, cloud and data storage services, libraries, market research, laboratories, quality labelling, testing, experimentation and certification or other related services, including those services provided by research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters, for the purpose of developing more effective or technologically advanced products, processes or services, including the implementation of innovative technologies and solutions (including digital technologies and solutions);

(96) ‘organisational innovation’ means the implementation of a new organisational method at the level of the undertaking (at group level in the given industry sector in the EEA), workplace organisation or external relations, including for instance by making use of novel or innovative digital technologies. Excluded from this definition are changes that are based on organisational methods already in use in the undertaking, changes in management strategy, mergers and acquisitions, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products;

(97) ‘process innovation’ means the implementation of a new or significantly improved production or delivery method, including significant changes in techniques, equipment or software, at the level of the undertaking (at group level in the given industry sector in the EEA), including for instance by making use of novel or innovative digital technologies or solutions. Excluded from this definition are minor changes or improvements, increases in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products;”;

(w) the following point (98a) is inserted:

“(98a) ‘testing and experimentation infrastructure’ means facilities, equipment, capabilities and resources, such as test beds, pilot lines, demonstrators, testing facilities or living labs, and related support services that are used predominantly by undertakings, especially SMEs, which seek support for testing and experimentation, in order to develop new or improved products, processes and services, and to test and upscale technologies, to advance through industrial research and experimental development. Access to publicly funded testing and experimentation infrastructures is open to several users and must be granted on a transparent and non-discriminatory basis and on market terms. Testing and experimentation infrastructures are sometimes also known as technology infrastructures*;

* See Commission Staff Working Document, ‘Technology Infrastructures’, SWD(2019) 158 final, 8.4.2019.”;

(x) points (101) and (102) are replaced by the following:

“(101) ‘environmental protection’ means any action or activity designed to reduce or prevent pollution, negative environmental impacts or other damage to physical surroundings (including to air, water and soil), ecosystems or natural resources by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials

and increase efficiencies. It also covers actions that reinforce adaptive capacity and minimise vulnerability to climate impacts;

(102) ‘Union standard’ means:

- (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings, excluding standards or targets set at Union level which are binding for Member States but not for individual undertakings; or
- (b) the obligation to use the best available techniques (BAT), as defined in Directive 2010/75/EU of the European Parliament and of the Council*, and to ensure that emission levels do not exceed those that would be achieved when applying BAT; where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU or under other applicable directives, those levels will be applicable for the purpose of these guidelines; where those levels are expressed as a range, the limit for which the BAT is first achieved for the undertaking concerned will be applicable;

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

(y) points (102a), (102b) and (102c) are replaced by the following:

“(102a) ‘recharging infrastructure’ means a fixed or mobile infrastructure supplying vehicles or mobile terminal equipment or mobile groundhandling equipment with electricity;

(102b) ‘refuelling infrastructure’ means a fixed or mobile infrastructure supplying vehicles or mobile terminal equipment or mobile groundhandling equipment with hydrogen;

(102c) ‘renewable hydrogen’ means hydrogen produced from renewable energy in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001*;

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

(z) the following points 102(d) to 102(j) are inserted:

“(102d) ‘renewable electricity’ means electricity generated from renewable sources, as defined in Article 2, point (1), of Directive 2018/2001/EU;

(102e) ‘smart recharging’ means a recharging operation in which the intensity of electricity delivered to the battery is adjusted in real-time, based on information received through electronic communication;

(102f) ‘clean vehicle’ means:

- (a) concerning light-duty road vehicles: a clean vehicle as defined in Article 4, point (4)(a) of Directive 2009/33/EC of the European Parliament and of the Council*;

- (b) concerning heavy-duty road vehicles:
- until 31 December 2025, a low-emission heavy-duty vehicle as defined in Article 3, point (12) of Regulation (EU) 2019/1242 of the European Parliament and of the Council**;
 - until 31 December 2025, a clean vehicle as defined in Article 4, point (4)(b) of Directive 2009/33/EC and not falling within the scope of Regulation (EU) 2019/1242;
- (d) concerning inland waterway vessels:
- an inland vessel for passenger transport that has a hybrid or dual fuel engine deriving at least 50 % of its energy from zero direct (tailpipe) CO₂ emission fuels or plug-in power for its normal operation;
 - an inland vessel for freight transport with direct (tailpipe) emissions of CO₂ per tonne kilometre (g CO₂/tkm), calculated (or estimated in case of new vessels) using the International Maritime Organization Energy Efficiency Operational Indicator (EEOI), 50 % lower than the average reference value for emissions of CO₂ determined for heavy duty vehicles (vehicle subgroup 5- LH) in accordance with Article 11 of Regulation (EU) 2019/1242;
- (e) concerning maritime vessels:
- a sea and coastal vessel for passenger, freight transport, for port operations or for auxiliary activities that (i) has a hybrid or dual fuel engine deriving at least 25 % of its energy from zero direct (tailpipe) CO₂ emission fuels or plug-in power for its normal operation at sea and in ports, or (ii) has an attained International Maritime Organization's Energy Efficiency Design Index (EEDI) value 10 % below the EEDI requirements applicable on 1 April 2022 and is able to run on zero direct (tailpipe) CO₂ emission fuels or on fuels from renewable sources;
 - a sea and coastal vessel for freight transport that is used exclusively for operating coastal and short sea services designed to enable modal shift of freight currently transported by land to sea and that has direct (tailpipe) CO₂ emissions, calculated using the EEDI, 50 % lower than the average reference CO₂ emissions value determined for heavy duty vehicles (vehicle sub group 5-LH) in accordance with Article 11 of Regulation (EU) 2019/1242;
- (f) concerning rail rolling stock: rolling stock that has zero direct tailpipe CO₂ emissions when operated on a track with necessary infrastructure and that uses a conventional engine where such infrastructure is not available (bimode);
- (102g) 'zero-emission vehicle' means:
- (a) concerning two- and three-wheel vehicles and quadricycles: a vehicle falling within the scope of Regulation (EU) 168/2013 of the European Parliament and of the Council*** with zero tailpipe CO₂ emissions, calculated in accordance with the requirements laid down in Article 24 and Annex V of that Regulation;

- (b) concerning light-duty road vehicles: a vehicle of category M1, M2 or N1 with zero tailpipe CO₂ emissions, as determined in accordance with the requirements laid down in Commission Regulation (EU) 2017/1151****;
- (c) concerning heavy-duty road vehicles: a zero-emission heavy duty vehicle as defined in Article 4, point (5) of Directive 2009/33/EC;
- (d) concerning inland waterway vessels: an inland vessel for passenger or freight transport with zero direct (tailpipe/exhaust) CO₂ emissions;
- (e) concerning maritime vessels: a sea and coastal vessel for passenger or freight transport, for port operations or for auxiliary activities that has zero direct (tailpipe) CO₂ emissions;
- (f) concerning rail rolling stock: rolling stock that has zero direct (tailpipe) CO₂ emissions;

(102h) ‘vehicle’ means any of the following:

- (a) a road vehicle of category M1, M2, N1, M3, N2, N3 or L;
- (b) an inland or a sea and coastal vessel for passenger or freight transport;
- (c) rolling stock;
- (d) aircraft;

(102i) ‘mobile groundhandling equipment’ means mobile equipment used in service activities incidental to air or maritime transport;

(102j) ‘mobile terminal equipment’ means mobile equipment used for the loading, unloading and transshipment of goods and intermodal loading units, and for moving cargo within a terminal area;

* Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean road transport vehicles in support of low-emission mobility (OJ L 120, 15.5.2009, p. 5).

** Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO₂ emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC (OJ L 198, 25.7.2019, p. 202).

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

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

(aa) point (103) is replaced by the following:

“(103) ‘energy efficiency’ means energy efficiency as defined in Article 2, point (4) of Directive 2012/27/EU of the European Parliament and of the Council*;

* 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 (OJ L 315, 14.11.2012, p. 1).”;

(bb) point (103a) is replaced by the following:

“(103a) ‘primary energy’ means energy from renewable and non-renewable sources which has not undergone any conversion or transformation process;”;

(cc) point (103b) is deleted;

(dd) point (103d) is replaced by the following:

“(103d) ‘smart-readiness’ means the capability of buildings or building units to adapt their operation to the needs of the occupant, including optimising energy efficiency and overall performance, and to adapt their operation in response to signals from the grid;”;

(ee) point (103e) is replaced by the following:

“(103e) ‘small mid-cap’ means an undertaking that is not an SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of Annex I, the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million; several entities shall be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I is fulfilled. For the purpose of the application of Articles 56e(10) and 56f, small mid-cap means an undertaking that is not an SME and employs up to 499 employees;”;

(ff) the following point (103f) is inserted:

“(103f) ‘energy savings’ means energy savings as defined in Article 2, point (5) of Directive 2012/27/EU;”;

(gg) point (105) is replaced by the following:

“(105) ‘energy efficiency fund’ or ‘EEF’ means a special investment vehicle set up for the purpose of investing in energy efficiency projects aimed at improving the energy efficiency of buildings. EEFs are managed by an energy efficiency fund manager;”;

(hh) point (108) is replaced by the following:

“(108) ‘cogeneration’ or ‘combined heat and power’ or ‘CHP’ means cogeneration as defined in Article 2, point (30), of Directive 2012/27/EU;”;

(ii) the following points (108a) and (108b) are inserted:

“(108a) ‘cogeneration based on renewable energy sources’ means cogeneration using 100 % energy from renewable sources as an input for the production of heat and power;

(108b) ‘heat pump’ means a machine, a device or installation that transfers heat from natural surroundings such as air, water or ground to buildings or industrial applications by reversing the natural flow of heat such that it flows from a lower to a higher temperature. For reversible heat pumps, it may also move heat from the building to the natural surroundings;”;

(jj) point (109) is replaced by the following:

“(109) ‘energy from renewable sources’ or ‘renewable energy’ means energy produced by plants using only renewable energy sources as defined in Article 2, point (1), of Directive 2018/2001/EU, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources and includes renewable electricity used for filling storage systems connected behind-the-meter (jointly installed or as an add-on to the renewable installation), but excludes electricity produced as a result of storage systems;”;

(kk) the following point (109a) is inserted:

“(109a) ‘renewable energy community’ means renewable energy community as defined in Article 2, point (16) of Directive (EU) 2018/2001;”;

(ll) points (110), (111), (112) and (113) are deleted;

(mm) point (114) is replaced by the following:

“(114) ‘innovative technology’ means a new and recently qualified technology compared to the state of the art in the industry, which carries a risk of technological or industrial failure and is not an optimisation or scaling up of an existing technology;”;

(nn) the following points (114a) and 114(b) are inserted:

“(114a) ‘demonstration project’ means demonstration project as defined in Article 2, point (24) of Regulation (EU) 2019/943;

(114b) ‘contract for difference’ means an aid instrument which entitles the beneficiary to a payment equal to the difference between a fixed ‘strike’ price(s) and a reference price – such as a market price, per unit of output;”;

(oo) points (115) and (116) are replaced by the following:

“(115) ‘balancing’ for electricity means balancing as defined in Article 2, point (10) of Regulation (EU) 2019/943 of the European Parliament and of the Council*;

(116) ‘standard balancing responsibilities’ means non-discriminatory balancing responsibilities across technologies which do not exempt from balance responsibility any generator as set out in Article 5 of Regulation (EU) 2019/943;

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

(pp) the following point (116a) is inserted:

“(116a) ‘balance responsible party (BRP)’ means balance responsible party as defined in Article 2, point (14) of Regulation (EU) 2019/943;”;

(qq) point (117) is replaced by the following:

“(117) ‘biomass’ means the biodegradable fraction of products, waste and residues from biological origin, as defined in Article 2, point (24), of Directive (EU) 2018/2001;”;

(rr) the following points (117a) to (117d) are inserted:

“(117a) ‘biofuels’ means biofuels as defined in Article 2, point (33), of Directive (EU) 2018/2001;

(117b) ‘biogas’ means biogas as defined in Article 2, point (28), of Directive (EU) 2018/2001;

(117c) ‘bioliquids’ means bioliquids as defined in Article 2, point (32), of Directive (EU) 2018/2001;

(117d) ‘biomass fuels’ means biomass fuels as defined in Article 2, point (27), of Directive (EU) 2018/2001;”;

(ss) points (118) and (119) are replaced by the following:

“(118) ‘funding gap’ means the net extra cost determined by the difference between the economic revenues and costs (including the investment and operation) of the aided project and those of the alternative project which the aid beneficiary would credibly carry out in the absence of aid. To determine the funding gap, the Member State must quantify, for the factual scenario and a credible counterfactual scenario, all main costs and revenues, the estimated weighted average cost of capital (‘WACC’) of the beneficiaries to discount future cash flows, as well as the net present value (‘NPV’) for the factual and counterfactual scenarios, over the lifetime of the project. The typical net extra cost can be estimated as the difference between the NPV for the factual scenario and for the counterfactual scenario over the lifetime of the reference project.

(119) ‘environmental tax or parafiscal levy’ means a tax or a levy applied on a specific tax base, products or services that have a clear negative effect on the environment or which seeks to charge certain activities, goods or services so that the environmental costs may be included in their price or so that producers and consumers are oriented towards activities which better respect the environment;”;

(tt) point (121) is deleted:

(uu) the following points (121a) to (121d) are inserted:

“(121a) ‘remediation’ means environmental management actions, such as the removal or detoxification of contaminants or excess nutrients from soil and water, that aim to remove sources of degradation;

(121b) ‘rehabilitation’ means environmental management actions that aim to reinstate a level of ecosystem functioning on degraded sites, where the goal is renewed and ongoing provision of ecosystem services rather than the biodiversity and integrity of a designated natural or semi-natural reference ecosystem;

(121c) ‘ecosystem’ means ecosystem as defined in Article 2, point (13) of Regulation (EU) No 2020/852 of the European Parliament and of the Council*;

(121d) ‘biodiversity’ means biodiversity as defined in Article 2, point (15) of Regulation (EU) No 2020/852;

* Regulation (EU) No 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).”;

(vv) the following points (123a), (123b), (123c) and (123d) are inserted:

“(123a) ‘pollutant’ means a pollutant as defined in Article 2, point (10) of Regulation (EU) 2020/852;

(123b) ‘pollution’ means pollution as defined in Article 3, point 2 of Directive 2010/75/EU;

(123c) ‘nature-based solution’ means an action to protect, conserve, restore, sustainably use and manage natural or modified terrestrial, freshwater, coastal and marine ecosystems, which addresses social, economic and environmental challenges effectively and adaptively, while simultaneously providing human well-being, ecosystem services, resilience and biodiversity benefits;

(123d) ‘restoration’ means the process of assisting the recovery of an ecosystem as a means of conserving biodiversity and increasing ecosystem resilience, notably to climate change. The restoration of ecosystems includes measures taken for the improvement of the condition of an ecosystem and the recreation or re-establishment of an ecosystem where that condition was lost and the improvement of ecosystem resilience and adaptation to climate change;”;

(ww) point 124 is replaced by the following:

“(124) ‘energy efficient district heating and cooling’ means efficient district heating and cooling as defined in Article 2, point (41) of Directive 2012/27/EU;”;

(xx) points (124a) and (124b) are inserted:

“(124a) ‘district heating’ and ‘district cooling’ means district heating or district cooling as defined in Article 2, point (19), of Directive 2010/31/EU;

(124b) ‘district heating and cooling systems’, means heating and or cooling generation facilities, thermal storage and distribution network, comprising both primary – transmission – and secondary network of pipelines, to supply heating or cooling to consumers. Reference to district heating is to be interpreted as district heating and/or cooling systems, depending on whether the networks supply heat or cooling jointly or separately;”;

(yy) points (126), (127) and (128) are replaced by the following:

“(126) ‘re-use’ means re-use as defined in Article 3, point (13), of Directive 2008/98/EC;

(127) ‘preparing for re-use’ means preparing for re-use as defined in Article 3, point 16, of Directive 2008/98/EC;

(128) ‘recycling’ means recycling as defined in Article 3, point 17, of Directive 2008/98/EC;”;

(zz) the following points (128a) to (128i) are inserted:

“(128a) ‘resource efficiency’ means reducing the quantity of inputs needed to produce a unit of output or substituting primary inputs with secondary inputs;

(128b) ‘waste’ means waste as defined in Article 3, point (1) of Directive 2008/98/EC of the European Parliament and of the Council*;

(128c) ‘waste heat’ means waste heat as defined in Article 2, point (9), of Directive (EU) 2018/2001;

(128d) ‘treatment’ means treatment as defined in Article 3, point (14) of Directive 2008/98/EC as well as treatment of other products, materials, or substances;

(128e) ‘recovery’ means recovery as defined in Article 3, point (15) of Directive 2008/98/EC as well as recovery of other products, materials or substances;

(128f) ‘disposal’ means disposal as defined in Article 3, point (19) of Directive 2008/98/EC;

(128g) ‘other products, materials or substances’ means materials, products and substances other than waste, including by-products referred to in Article 5 of Directive 2008/98/EC, agricultural and forestry residues, waste water, rain water and runoff water, minerals, nutrients, residual gases from production processes, and redundant products, parts and materials;

(128h) ‘redundant products, parts and materials’ means products, parts or materials that are no longer needed by or useful for its holder but are suitable for re-use;

(128i) ‘separate collection’ means separate collection as defined in Article 3, point (11) of Directive 2008/98/EC;

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

(aaa) point (129) is deleted;

(bbb) point (130) is replaced by the following:

“(130) ‘energy infrastructure’ means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries and falling under the following categories:

(a) electricity:

- (i) transmission and distribution systems, where ‘transmission’ means the transport of electricity onshore as well as offshore on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply and ‘distribution’ means the transport of electricity onshore as well as offshore on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;
- (ii) any equipment or installation essential for the systems referred to in point (i) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;

- (iii) fully integrated network components , as defined in Article 2, point (51) of the Directive (EU) 2019/944 of the European Parliament and of the Council *;
 - (iv) smart electricity grids, which means systems and components integrating information and communications technology, through operational digital platforms, control systems and sensor technologies both at transmission and distribution level, aiming at a more secure, efficient and intelligent electricity transmission and distribution network, increased capacity to integrate new forms of generation, storage and consumption and facilitating new business models and market structures;
 - (v) off-shore electricity grids, which means any equipment or installation of electricity transmission or distribution infrastructure as defined in point (i), which has dual functionality: interconnection and transmission or distribution of offshore renewable electricity from the offshore generation sites to two or more countries. This also includes smart grids as well as any offshore adjacent equipment or installation essential to operate safely, securely and efficiently, including protection, monitoring and control systems, and necessary substations if they also ensure technology interoperability and among other interface compatibility between different technologies;
- (b) gas (natural gas, biogas- including biomethane – and/or renewable gas of non-biological origin):
- (i) transmission and distribution pipelines for the transport of gas that form part of a network, excluding high-pressure pipelines used for upstream distribution of natural gas;
 - (ii) underground storage facilities connected to the high-pressure gas pipelines referred to in point (i);
 - (iii) reception, storage and regasification or decompression facilities for liquefied or compressed gas;
 - (iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;
 - (v) smart gas grids, which means any of the following equipment or installation aiming at enabling and facilitating the integration of renewable and low-carbon gases (including hydrogen or gases of non-biological origin) into the network: digital systems and components integrating information and communication technologies, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission, distribution and consumption within a gas network. Furthermore, smart grids may also include equipment to enable reverse flows from the distribution to the transmission level and related necessary upgrades to the existing network;
- (c) hydrogen:

- (i) transmission pipelines, for the high-pressure transport of hydrogen, as well as distribution pipelines for the local distribution of hydrogen, giving access to multiple network users on a transparent and non-discriminatory basis;
- (ii) storage facilities, which means facilities used for the stocking of hydrogen of a high grade of purity, including the part of a hydrogen terminal used for storage but excluding the portion used for production operations, and including facilities reserved exclusively for hydrogen network operators in carrying out their functions. Hydrogen storage facilities include underground storage facilities connected to the high-pressure hydrogen pipelines referred to in point (i);
- (iii) dispatch, reception, storage and regasification or decompression facilities for hydrogen or hydrogen embedded in other chemical substances with the objective of injecting the hydrogen into the grid either for gas or dedicated to hydrogen;
- (iv) terminals, which means installations used for the transmission of liquid hydrogen into gaseous hydrogen for injection into the hydrogen network. terminals include ancillary equipment and temporary storage necessary for the transmission process and subsequent injection into the hydrogen network, but does not include any part of the hydrogen terminal used for storage;
- (v) interconnectors, which means a hydrogen network (or part thereof) which crosses or spans a border between Member States, or between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State;
- (vi) any equipment or installation essential for the hydrogen system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;

Any of the assets listed under points (i) to (vi) may be newly constructed assets or assets converted from natural gas to hydrogen, or a combination of the two. Assets listed under points (i) to (vi), which are subject to third party access shall qualify as energy infrastructure;

(d) carbon dioxide:

- (i) pipelines, other than upstream pipeline network, used to transport carbon dioxide from more than one source, this is to say, industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC of the European Parliament and of the Council** or for the purpose of use of carbon dioxide as feedstock or to enhance the yields of biological processes;
- (ii) facilities for liquefaction and buffer storage of carbon dioxide in view of its transport or storage. This does not include infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC and associated surface and injection facilities;

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

Assets listed under points (i), (ii) and (iii), which are subject to third party access shall qualify as energy infrastructure;

- (e) infrastructure used for transmission or distribution of thermal energy in the form of steam, hot water or chilled liquids from multiple producers or users, based on use of renewable energy or waste heat from industrial applications;
- (f) Projects of Common Interest, as defined in Article 2, point (4), of Regulation (EU) 347/2013 of the European Parliament and of the Council*** and project of mutual interest referred to in Article 171 of the Treaty;
- (g) other infrastructure categories that enable physical or wireless connection of renewable or carbon-free energy between producers and users from multiple access and exit points and which are open to access by third parties not belonging to the infrastructure owner or manager undertakings;

Assets listed under points (a) to (g) which are built for one or a small group of *ex ante* identified users and tailored to their needs ('dedicated infrastructure') shall not qualify as energy infrastructure.

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

** Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114).

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

(ccc) the following points (130a), (130b), (130c) and (130d) are inserted:

“(130a) ‘distribution system operator’ (DSO) means a distribution system operator as defined in Article 2, point (29), of Directive (EU) 2019/944;

(130b) ‘transmission system operator’ (TSO) means a transmission system operator as defined in Article 2, point (35), of Directive (EU) 2019/944;

(130c) ‘electricity storage’ means deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy;

(130d) ‘thermal storage’ means deferring the final use of thermal energy to a moment later than when it was generated, or the conversion of electrical or thermal energy into a form of energy which can be stored, the storing of such energy, and, where appropriate, the subsequent

conversion or reconversion of such energy into thermal energy for final use (i.e., heating or cooling);”;

(ddd) point (131) is replaced by the following:

“(131) ‘internal energy market legislation’ consists of Directive (EU) 2019/944, Directive 2009/73/EC of the European Parliament and of the Council*, Regulation (EU) 2019/943 and Regulation (EC) No 715/2009 of the European Parliament and of the Council**;

* Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

** Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).”;;

(eee) the following points (131a) and (131b) are inserted:

“(131a) ‘carbon capture and storage’ or ‘CCS’ means a set of technologies that make it possible to capture the CO₂ emitted from industrial plants, including process-inherent emissions, or to capture it directly from ambient air, to transport it to a storage site and inject it in suitable underground geological formations for the purpose of permanent storage;

(131b) ‘carbon capture and use’ or ‘CCU’ means a set of technologies that make it possible to capture the CO₂ emitted from industrial plants, including process-inherent emissions, or to capture it directly from ambient air, and to transport it to a CO₂-consumption or utilisation site for full usage of that CO₂;”;

(fff) point (134) is deleted;

(ggg) point (137) is replaced by the following:

“(137) ‘broadband infrastructure’ means a broadband network without any active component and comprises the physical infrastructure, including ducts, poles, masts, towers, dark fibre, cabinets and cables (including dark fibre and copper cables);

(hhh) the following points (137a), (137b) and (137c) are inserted:

“(137a) ‘backhaul network’ means the part of a broadband network that connects the access network to the backbone network and which does not provide direct access to end-users. It is the part of the network where the traffic of end users is aggregated;

(137b) ‘backbone network’ means the core network that interconnects backhaul networks from different areas or regions;

(137c) ‘access network’ means the segment of a broadband network that connects the backhaul network with the end users’ premises or devices;”;

(iii) point (139) is replaced by the following:

“(139) ‘wholesale access’ means access which enables an operator to utilise the facilities of another operator. The wholesale access shall include, on the basis of the current technological

developments, at least the following access products: (i) for FTTx networks: access to the broadband infrastructure, unbundling and bitstream access; (ii) for cable networks: access to the broadband infrastructure and access to active services; (iii) for fixed wireless networks: access to the broadband infrastructure and access to active services; (iv) for mobile networks: access to the broadband infrastructure and access to active services (at least roaming); (v) for satellite platforms: access to active services; (vi) for backhaul networks: access to the broadband infrastructure and access to active services.”;

(jjj) point (139a) is replaced by the following:

“(139a) ‘premises passed’ means end-user premises to which, upon request from end-users and within 4 weeks from the date of request, a provider can provide broadband services (regardless of whether these premises are already connected or not connected to the network). The price charged for the provision of broadband services at the end users’ premises in this case must not exceed normal connection fees, meaning it must not include any additional or exceptional cost as compared to the standard commercial practice and, in any case, must not exceed the usual price in the Member State concerned. That price must be determined by the competent national authority;”;

(kkk) the following points (139d), (139e), and (139f) are inserted:

“(139d) ‘peak-time’ means the time of the day with a typical duration of one hour where the network load is usually at its maximum;

(139e) ‘peak-time conditions’ means the conditions under which the network is expected to operate at ‘peak-time’;

(139f) ‘relevant time horizon’ means a time horizon used for verifying planned private investments and corresponds to the time frame that the Member State estimates for deploying the planned State funded network, starting from the moment of publication of the public consultation on the planned State intervention until the entry into operation of the network (i.e. start of the provision of wholesale and/or retail services on the State funded network). The relevant time horizon cannot be shorter than two years;”;

(lll) point (157) is replaced by the following:

“(157) ‘port infrastructure’ means infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, infrastructure for the collection of ship-generated waste and cargo residues and recharging and refuelling infrastructure in ports supplying vehicles, mobile terminal equipment and mobile groundhandling equipment with electricity, hydrogen, ammonia and methanol;”;

(mmm) point (161) is deleted;

(3) in Article 4, paragraph 1 is amended as follows:

(a) points (a) to (sa) are replaced by the following:

“(a) for regional investment aid: for an investment with eligible costs of EUR 110 million or more, the aid amounts per undertaking per investment projects as set out below:

– in cases of maximum regional aid intensity of 10 %: EUR 8.25 million;

- in cases of maximum regional aid intensity of 15 %: EUR 12.38 million;
- in cases of maximum regional aid intensity of 20 %: EUR 16.5 million;
- in cases of maximum regional aid intensity of 25 %: EUR 20.63 million;
- in cases of maximum regional aid intensity of 30 %: EUR 24.75 million;
- in cases of maximum regional aid intensity of 35 %: EUR 28.88 million;
- in cases of maximum regional aid intensity of 40 %: EUR 33 million;
- in cases of maximum regional aid intensity of 50 %: EUR 41.25 million;
- in cases of maximum regional aid intensity of 60 %: EUR 49.5 million;
- in cases of maximum regional aid intensity of 70 %: EUR 57.75 million;

(b) for regional urban development aid, EUR 22 million as laid down in Article 16(3);

(c) for investment aid to SMEs: EUR 8.25 million per undertaking per investment project;

(d) for aid for consultancy in favour of SMEs: EUR 2.2 million per undertaking, per project;

(e) for aid to SMEs for participation in fairs: EUR 2.2 million per undertaking, per year;

(f) for aid for undertakings participating in European Territorial Cooperation projects: for aid under Article 20, EUR 2.2 million per undertaking, per project; for aid under Article 20a, the amounts laid down in Article 20a(2) per undertaking, per project;

(g) for risk finance aid: EUR 16.5 million per eligible undertaking as laid down in Article 21(8) and 21a(2);

(h) for aid for start-ups: the amounts laid down per undertaking in Article 22(3), (4), (5) and (7);

(i) for aid for research and development:

- (i) if the project is predominantly fundamental research: EUR 55 million per undertaking, per project; that is the case where more than half of the eligible costs of the project are incurred through activities which fall within the category of fundamental research;
- (ii) if the project is predominantly industrial research: EUR 35 million per undertaking, per project; that is the case where more than half of the eligible costs of the project are incurred through activities which fall within the category of industrial research or within the categories of industrial research and fundamental research taken together;
- (iii) if the project is predominantly experimental development: EUR 25 million per undertaking, per project; that is the case where more than half of the eligible costs of the project are incurred through activities which fall within the category of experimental development;

- (iv) if the project is a Eureka project, is implemented by a Joint Undertaking established on the basis of Article 185 or of Article 187 of the Treaty, or complies with the conditions set out in Article 25(6)(d), the amounts referred to in points (i) to (iii) are doubled;
- (v) if the aid for research and development projects is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of a reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the time of grant, the amounts referred to in points (i) to (iv) are increased by 50 %;
- (vi) aid for feasibility studies in preparation for research activities: EUR 8.25 million per study;
- (vii) for aid for SMEs for research and development projects awarded a Seal of Excellence quality label and implemented under Article 25a, the amount referred to in Article 25a;
- (viii) for aid Marie Skłodowska-Curie actions and ERC Proof of Concept actions implemented under Article 25b, the amounts referred to in Article 25b;
- (ix) for aid involved in co-funded research and development projects implemented under Article 25c, the amounts referred to in Article 25c;
- (x) for aid for Teaming actions, the amounts referred to in Article 25d;
- (xi) for aid involved in the co-funding of projects supported by the European Defence Fund or the European Defence Industrial Development Programme under Article 25e: EUR 80 million per undertaking, per project;
- (j) for investment aid for research infrastructures: EUR 35 million per infrastructure;
- (ja) for investment aid for testing and experimentation infrastructures: EUR 25 million per infrastructure;
- (k) for aid for innovation clusters: EUR 10 million per cluster;
- (l) Innovation aid for SMEs: EUR 10 million per undertaking, per project;
- (m) for aid for process and organisational innovation: EUR 12.5 million per undertaking, per project;
- (n) for training aid: EUR 3 million per training project;
- (o) for aid for the recruitment of disadvantaged workers: EUR 5.5 million per undertaking, per year;
- (p) for aid for the employment of workers with disabilities in the form of wage subsidies: EUR 11 million per undertaking, per year;

(q) for aid for compensating the additional costs of employing workers with disabilities: EUR 11 million per undertaking, per year;

(r) for aid for compensating the costs of assistance provided to disadvantaged workers: EUR 5.5 million per undertaking, per year;

(s) for investment aid for environmental protection, unless otherwise specified: EUR 30 million per undertaking per investment project;

(sa) for aid for dedicated infrastructure and storage referred to in Article 36(5): EUR 25 million per project;”;

(b) points (sb) to (sh) are inserted:

“(sb) for investment aid for recharging or refuelling infrastructure referred to in Article 36a(1) and (2): EUR 30 million per undertaking per project and, in the case of schemes, an average annual budget of EUR 300 million;

(sc) for investment aid for the combined improvements of the energy and environmental performance of buildings referred to in Articles 38a(7) and 39(2a): EUR 30 million per undertaking per project;

(sd) for aid for the facilitation of energy performance contracting referred to in Article 38b: EUR 30 million of total nominal outstanding financing per beneficiary;

(se) for investment aid for energy efficiency projects in buildings in the form of financial instruments: the amounts set out in Article 39(5);

(sf) for aid in form of reduction of environmental taxes or levies referred to in Article 44a: EUR 50 million per scheme per year;

(sg) for aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat referred to in Article 19c: EUR 200 000 per beneficiary per calendar year. For microenterprises active in the primary production of agricultural products, this limit shall be EUR 25 000 per beneficiary per calendar year, and for microenterprises active in the fishery and aquaculture sectors, EUR 30 000 per beneficiary per calendar year;

(sh) for aid to SMEs in the form of temporary public interventions concerning the supply of electricity, gas or heat produced from natural gas or electricity to mitigate the impact of price increases following Russia’s war of aggression against Ukraine referred to in Article 19d: EUR 2 million per beneficiary per calendar year. For SMEs active in the primary production of agricultural products, this limit shall be EUR 250 000 per beneficiary per calendar year, and for SMEs active in the fishery and aquaculture sectors, EUR 300 000 per beneficiary per calendar year. Aid granted to undertakings active in the processing and marketing of agricultural products shall be conditional on not being partly or entirely passed on to primary producers;”;

(c) points (t) and (u) are deleted;

(d) points (v) to (x) are replaced by the following:

“(v) for operating aid for the promotion of electricity from renewable sources, as referred to in Article 42, and operating aid for the promotion of energy from renewable sources and renewable hydrogen in small projects and renewable energy communities, as referred to in

Article 43: EUR 30 million per undertaking per project; the sum of the budgets of all the schemes falling under Article 42 and the sum of the budgets of all the schemes falling under Article 43 should respectively not exceed EUR 300 million per year;

(w) for aid for district heating and/or cooling systems, as referred to in Article 46: EUR 50 million per undertaking per project;

(x) for aid for energy infrastructure, as referred to in Article 48: EUR 70 million per undertaking per project;

(y) for aid for the deployment of fixed broadband networks awarded in the form of a grant: EUR 100 million total costs per project; for aid for fixed broadband networks awarded in the form of a financial instrument the nominal amount of total financing provided to any final beneficiary per project must not exceed EUR 150 million;”;

(e) point (yd) is inserted:

“(yd) for aid for the deployment of backhaul networks awarded in the form of a grant: EUR 100 million total costs per project; for aid for the deployment of backhaul networks awarded in the form of a financial instrument the nominal amount of total financing provided to any final beneficiary per project must not exceed EUR 150 million;”;

(f) points (z) to (cc) are replaced by the following:

“(z) for investment aid for culture and heritage conservation: EUR 165 million per project; operating aid for culture and heritage conservation: EUR 82.5 million per undertaking per year;

(aa) for aid schemes for audiovisual works: EUR 55 million per scheme per year;

(bb) for investment aid for sport and multifunctional recreational infrastructures: EUR 33 million or the total costs exceeding EUR 110 million per project; operating aid for sport infrastructure: EUR 2.2 million per infrastructure per year;

(cc) for investment aid for local infrastructures: EUR 11 million or the total costs exceeding EUR 22 million for the same infrastructure;”;

(g) points (ee) to (ff) are replaced by the following:

“(ee) for aid for maritime ports: eligible costs of EUR 143 million per project (or EUR 165 million per project in a maritime port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council*); as regards dredging a project is defined as all dredging carried out within one calendar year;

(ff) for aid for inland ports: eligible costs of EUR 44 million per project (or EUR 55 million per project in an inland port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013); as regards dredging a project is defined as all dredging carried out within one calendar year;

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

(h) point (hh) is replaced by the following:

“(hh) for aid to SMEs for costs incurred by participating in community-led local development (‘CLLD’) projects: for aid under Article 19a, EUR 2 million per undertaking, per project; for aid under Article 19b, the amounts laid down in Article 19b(2) per project.”;

(4) Article 5 is amended as follows:

(a) in paragraph 2, point (f) is replaced by the following:

“(f) aid comprised in risk finance measures if the conditions laid down in Article 21 and 21a are fulfilled;”;

(b) in paragraph 2, the following point (ga) is inserted:

“(ga) aid for SMEs in the form of reduced access fees or free access to innovation advisory services and innovation support services, as defined in Article 2, points (94) and (95) respectively, offered for example by research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters based on an aid scheme provided that the following conditions are met:

(i) the advantage consisting in reduced fees or free access acquired is quantifiable and demonstrable;

(ii) the full or partial price discounts for services and the rules in accordance with which SMEs may apply for and be selected and granted discounts are made publicly available (through web sites or other suitable means) before the service provider starts offering the discounts;

(iii) the service provider shall keep records of the amounts of aid granted to each SME in the form of price discounts to make sure that the ceilings set out in Article 28 (3) and (4) are complied with. Such records shall be kept for 10 years from the date on which the last aid was granted by the service provider;”

(c) in paragraph 2, point (l) is replaced by the following:

“(l) aid involved in financial products supported by the InvestEU Fund, if the conditions laid down in Section 16 of Chapter III are fulfilled;”;

(d) in paragraph 2, the following points (m) and (n) are inserted:

“(m) aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat, if the conditions set out in Articles 19c are fulfilled;

(n) aid to SMEs in the form of temporary public interventions concerning the supply of electricity, gas or heat produced from natural gas or electricity to mitigate the impact of price increases following Russia’s war of aggression against Ukraine, if the conditions set out in Article 19d are fulfilled.”;

(5) Article 6 is amended as follows:

(a) in paragraph 5, point (b) is replaced by the following:

“(b) aid for access to finance for SMEs, if the relevant conditions laid down in Articles 21, 21a and 22 are fulfilled;”;

(b) in paragraph 5, point (l) is replaced by the following:

“(l) aid for SMEs participating in or benefitting from community-led local development (‘CLLD’) projects, if the relevant conditions in Article 19a or Article 19b are fulfilled;”;

(c) in paragraph 5, the following points (m), (n), (o), (p) and (q) are added:

“(m) aid for the remediation of environmental damage and the rehabilitation of natural habitats and ecosystems where the remediation or rehabilitation costs exceed the increase in value of the land or property and the conditions laid down in Article 45 are fulfilled;

(n) aid for the protection of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation where the conditions laid down in Article 45 are fulfilled.

(o) aid for the promotion of energy from renewable energy sources under Article 41, 42 and 43 when the aid is granted automatically in accordance with objective and non-discriminatory criteria and without further exercise of discretion by the Member State and the measure has been adopted and is in force before work on the aided project or activity has started;

(p) aid to microenterprises in the form of public interventions concerning the supply of electricity, gas or heat, subject to the conditions set out in Article 19c;

(q) aid to SMEs in the form of temporary public interventions concerning the supply of electricity, gas or heat produced from natural gas or electricity to mitigate the impact of price increases following Russia’s war of aggression against Ukraine, subject to the conditions set out in Article 19d.”;

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

“1. For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. Value added tax charged on eligible costs or expenses that is refundable under the applicable national tax law shall, however, not be taken into account for calculating aid intensity and eligible costs. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary. The amounts of eligible costs may be calculated in accordance with simplified cost options, provided that an operation is at least partly financed through a Union fund that allows the use of simplified cost options and that the category of costs is eligible according to the relevant exemption provision. In such case, the simplified cost options provided in the relevant rules governing the Union fund are applicable. In addition, for projects implemented in line with Recovery and Resilience Plans as approved by the Council under Regulation (EU) 2021/241 of the European Parliament and of the Council,* the amounts of eligible costs may also be calculated in accordance with simplified cost options, provided that the simplified cost options set out in Regulation (EU) No 1303/2013 or Regulation (EU) 2021/1060 are used. In addition, for aid under Articles 25a and 25b, indirect costs can be calculated in line with the rules laid down in the respective paragraph 3 of Articles 25a and 25b.

* Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).”;

(7) Article 8 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. Where Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member State is combined with State aid, only the latter shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law. By way of derogation, the total public funding for projects supported by the European Defence Fund may reach up to the total eligible costs of the project, irrespective of the maximum funding rate applicable under this fund, provided that the notification thresholds and maximum aid intensities or maximum aid amounts under this Regulation are respected.”;

(b) paragraph 4 is replaced by the following:

“4. Aid without identifiable eligible costs exempted under Article 19b, 20a, 21, 21a, 22 or 23, Article 56e(5), point (a)(ii), (iii) or (iv), Article 56e(10) and Article 56f may be cumulated with any other State aid with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with any other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by this or another block exemption regulation or decision adopted by the Commission. Aid without identifiable eligible costs exempted under this Regulation may be cumulated with other aid without identifiable eligible costs granted to remedy a serious disturbance in the economy of a Member State under Article 107(3)(b) TFEU approved in a decision adopted by the Commission. Aid without identifiable eligible costs exempted under Article 56e(5), point (a)(ii), (iii) or (iv), Article 56e(10) and Article 56f may be cumulated with other aid without identifiable eligible costs exempted under those Articles.”;

(8) Article 9 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

“1. The Member State concerned shall ensure the publication, in the Commission’s transparency award module* or on a comprehensive State aid website, at national or regional level, of:

- (a) the summary information referred to in Article 11 in the standardised format laid down in Annex II or a link providing access to it;
- (b) the full text of each aid measure, as referred to in Article 11 or a link providing access to the full text;
- (c) the information referred to in Annex III on each individual aid award exceeding EUR 100 000, or for aid involved in financial products supported by the InvestEU fund under Section 16 on each individual aid award exceeding EUR 500 000, or for beneficiaries active in primary agricultural production or in the fishery and aquaculture

sector, other than those to which Section 2a applies, on each individual aid award exceeding EUR 10 000.

As regards aid granted to European Territorial Cooperation projects as referred to in Article 20, the information referred to in this paragraph shall be placed on the website of the Member State in which the managing authority concerned, as defined in Article 21 of Regulation (EU) No 1299/2013 of the European Parliament and of the Council**, or Article 45 of Regulation (EU) 2021/1059 of the European Parliament and of the Council***, whichever is applicable, is located. Alternatively, the participating Member States may decide that each of them shall provide the information relating to the aid measures within their territory on the respective websites.

The publication obligations laid down in the first subparagraph shall not apply to aid granted to European Territorial Cooperation projects referred to in Article 20a, as well as community-led local development ('CLLD') projects under Article 19b.

2. For schemes in the form of tax advantages, and for schemes covered by Articles 16, 21a and 22**** the conditions set out in paragraph 1, first subparagraph, point (c), of this Article shall be considered fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):

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

0.1-0.5;

0.5-1;

1-2;

2-5;

5-10;

10-30; and

30 and more.

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

**Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p. 259).

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

**** For schemes under Articles 16, 21a and 22 of the present Regulation, the requirement to publish information on each individual award exceeding EUR 100 000 can be waived with respect to SMEs which have not carried out any commercial sale in any market.”;

(b) paragraph 4 is replaced by the following

“4. The information referred to in paragraph 1, point (c), of this Article shall be organised and accessible in a standardised manner, as described in Annex III, and shall allow for effective search and download functions. It shall be published within 6 months from the date the aid was granted, or for aid in the form of tax advantages, within 1 year from the date the tax declaration is due, and shall be available for at least 10 years from the date on which the aid was granted. For aid in the form of tax advantages, if there is no formal requirement for an annual declaration, 31 December of the year for which the aid was granted will be considered as the granting date for the purposes of this paragraph.”;

(9) Article 11, paragraph 1, last sentence, is replaced by the following:

“This first subparagraph shall not apply in respect of aid granted to European Territorial Cooperation projects referred to in Article 20a, as well as to community-led local development (‘CLLD’) projects as referred to Article 19b.”;

(10) Article 13 is replaced by the following:

“Article 13

Scope of regional aid

This Section shall not apply to:

- (a) aid in the steel sector, the lignite sector and the coal sector;
- (b) aid to the transport sector as well as the related infrastructure; aid for energy generation, storage, transmission, distribution and infrastructure, except for regional investment aid in outermost regions and regional operating aid schemes; and aid in the broadband sector except for regional operating aid schemes;
- (c) 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 or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;
- (d) regional operating aid granted to undertakings whose principal activities fall under Section K ‘Financial and insurance activities’ of 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.”;

(11) Article 14 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

(b) paragraphs (4) to (7) are replaced by the following:

“4. The eligible costs shall be one or several of the following:

- (a) investment costs in tangible and intangible assets; or
- (b) the estimated wage costs of employment created as a result of an initial investment, calculated over two years; or
- (c) a combination of part of the costs referred to in points (a) and (b) but not exceeding the amount of point (a) or (b), whichever is higher.

5. The investment shall be maintained in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. This shall not prevent the replacement of a plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the 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 for large enterprises, and three years for SMEs;
- (b) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the aid beneficiary to purchase the asset at the expiry of the term of the lease.

In the case of an initial investment as referred to in Article 2, point 49(b) or point 51(b), in principle only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. However, if a member of the family of the original owner, or one or more employees, takes over a small enterprise, the condition that the assets shall be bought from third parties unrelated to the buyer does not apply. The transaction shall take place under market conditions. If the acquisition of the assets of an establishment is accompanied by an additional investment eligible for regional aid, the eligible costs of that additional investment should be added to the cost of acquisition of the assets of the establishment. 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.

7. For aid awarded to large enterprises for a fundamental change in the production process, the eligible costs shall exceed the depreciation of the assets linked to the activity to be modernised over the preceding three fiscal years. For aid awarded to large enterprises or SMEs for a diversification of an existing establishment, the eligible costs shall exceed by at least 200 % the book value of the reused assets, as registered in the fiscal year preceding the start of works.”;

(c) paragraph 8 is amended as follows:

(i) in the first subparagraph, point (d) is replaced by the following:

“(d) they must be included in the assets of the undertaking that receives the aid and must remain associated with the project for which the aid is awarded for at least five years (three years for SMEs).”;

(ii) the second subparagraph is replaced by the following:

“For large enterprises, costs of intangible assets shall be eligible only up to 50 % of the total eligible investment costs for the initial investment. For SMEs, 100 % of the costs of intangible assets shall be eligible.”;

(d) in paragraph 9, points (a) and (b) are replaced by the following:

“(a) the investment project shall lead to a net increase in the number of employees in the establishment concerned compared to the average over the previous 12 months, after deducting from the number of jobs created any job losses that occurred during that period, expressed in annual labour units;

(b) each post shall be filled within three years of completion of the investment;”;

(e) paragraphs 10 and 11 are deleted;

(f) in paragraph 12, the first sentence is replaced by the following:

“12. The aid intensity shall not exceed the maximum aid intensity established in the regional aid map which is in force at the time the aid is awarded in the area concerned.”;

(g) in paragraph 13, the first sentence is replaced by the following:

“13. Any initial investment related to the same or a similar activity 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”;

(h) paragraphs 14 and 15 are replaced by the following:

“14. The aid beneficiary shall provide a financial contribution of at least 25 % of the eligible costs through its own resources or by external financing, in a form that is free of any public support. The 25 % own contribution requirement shall not apply to investment aid granted for investment in the outermost regions insofar as a lower contribution is necessary to fully accommodate the maximum aid intensity.

15. For an initial investment linked to European territorial cooperation projects covered by Regulation (EU) No 1299/2013 or Regulation (EU) 2021/1059, the aid intensity of the area in which the initial investment is located shall apply to all beneficiaries participating in the project. If the initial investment is located in two or more assisted areas, the maximum aid intensity shall be the one applicable in the assisted area where the highest amount of eligible costs are incurred. In assisted areas eligible for aid under Article 107(3), point (c) of the Treaty, this provision shall apply to large enterprises only if the initial investment creates a new economic activity.”;

(12) Article 15 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

“(b) the additional transport costs are calculated on the basis of the journey of the goods inside the national border of the Member State concerned using the means of transport which results in the lowest costs for the beneficiary. The Member State may impose environmental standards to be fulfilled by the mode of transport chosen, and if such

standards are imposed on the beneficiary it may base the calculation of the additional transport costs on the lowest cost for fulfilling those environmental standards.”;

(b) in paragraph 3, the introductory phrase is replaced by the following:

“3. In sparsely and very sparsely populated areas, the regional operating aid schemes shall prevent or reduce depopulation under the following conditions:”;

(13) Article 16 is amended as follows:

(a) paragraph 3 is replaced by the following:

“3. The total investment in an urban development project under any urban development aid measure shall not exceed EUR 22 million.”;

(b) paragraph 6 is replaced by the following:

“6. The urban development aid shall leverage additional investment from independent private investors as defined in Article 2 point (72) at the level of the urban development funds or the urban development projects, so as to achieve an aggregate amount reaching a minimum of 20% of the total financing provided to an urban development project.”;

(14) Article 17 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

“2. The eligible costs shall be one or several of the following:

- (a) the costs of investment in tangible and intangible assets, including one-off non-amortizable costs linked directly to the investment and its initial installation;
- (b) the estimated wage costs of employment directly created by the investment project, calculated over two years;
- (c) a combination of part of the costs referred to in points (a) and (b) but not exceeding the amount of point (a) or (b), whichever is higher.

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 intangible assets related to the setting-up of a new establishment; the extension of an existing establishment; the diversification of the output of an establishment into products or services not previously produced in or provided from the establishment; or a fundamental change in the overall production process of the product(s) or overall provision of the service(s) concerned by the investment in the establishment; or
- (b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased. Sole acquisition of the shares of an undertaking does not qualify as investment. The transaction shall take place under market conditions. In principle, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. However, if a member of the family of the original

owner, or one or more employees, takes over a small enterprise, the condition that the assets shall be bought from third parties unrelated to the buyer does not apply.

A replacement investment thus does not constitute an investment in the meaning of this paragraph.”;

(b) the following paragraph 3a is inserted:

“3a. 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 three years after the expected date of completion of the investment;
- (b) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the aid beneficiary to purchase the asset at the expiry of the term of the lease.”;

(c) paragraph 4 is amended as follows:

(i) point (b) is replaced by the following:

“(b) they shall be amortisable;”;

(ii) point (d) is replaced by the following:

“(d) they shall be included in the assets of the undertaking that receives the aid for at least three years.”;

(15) Articles 19a and 19b are replaced by the following:

“Article 19a

Aid for costs incurred by SMEs participating in community-led local development (‘CLLD’) projects

1. Aid for costs incurred by SMEs participating in CLLD projects covered by Regulation (EU) No 1303/2013 or Regulation (EU) 2021/1060 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 following costs, set out in Article 35(1) of Regulation (EU) No 1303/2013 or Article 34(1) of Regulation (EU) 2021/1060, whichever is applicable, shall be eligible for CLLD projects:

- (a) the costs of preparatory support, capacity building, training and networking with a view of preparing and implementing a CLLD strategy;
- (b) implementation of approved operations;
- (c) preparation and implementation of the cooperation activities;
- (d) running costs linked to the management of the implementation of the CLLD strategy;

- (e) animation of the CLLD strategy in order to facilitate exchange between stakeholders to provide information and to promote the strategy and projects, and to support potential beneficiaries with a view of developing operations and preparing applications.
3. The aid intensity shall not exceed the maximum support rates provided for in the Fund specific Regulations supporting CLLD.

Article 19b

Limited amounts of aid to SMEs benefitting from community-led local development ('CLLD') projects

1. Aid to undertakings participating in, or benefitting from, CLLD projects, as referred to in Article 19a(1), 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 total amount of aid under this Article granted per project shall not exceed EUR 200 000.”;

- (16) the following Articles 19c and 19d are inserted:

“Article 19c

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

1. Aid to microenterprises in the form of of public interventions concerning the supply of electricity, gas or heat shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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. This Article shall apply to:

- (a) public interventions in price setting reducing the prices applied by suppliers to microenterprises per unit of electricity, gas or heat;
- (b) payments made to microenterprises, be it directly or via suppliers, per unit of electricity, gas or heat consumption compensating for part of the costs of that consumption.

2. The measures pursuant to paragraph (1) shall:

- (a) discriminate neither between suppliers nor between microenterprises;
- (b) provide that all suppliers are eligible to provide offers for the supply of electricity, gas or heat to microenterprises on the same basis;
- (c) provide for a mechanism that, if granted via a supplier, ensures that the aid is passed on to the largest extent possible the final beneficiary; and
- (d) result in a price that is above cost, at a level where effective price competition can occur.

3. The aid amount shall be equal to the payment granted or, in the case of public interventions in price setting, shall not exceed the difference between the market price that would have had to be paid for the total electricity, gas and/or heat consumed by a beneficiary, and the price to be paid for this consumption following the public intervention.

Article 19d

Aid to SMEs in the form of temporary public interventions concerning the supply of electricity, gas or heat produced from natural gas or electricity to mitigate the impact of price increases following Russia's war of aggression against Ukraine

1. Aid to SMEs in the form of public interventions concerning the supply of electricity, gas or heat, to the extent it is produced from natural gas or electricity, 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. This Article shall apply to:

- (a) public interventions in price setting reducing the prices applied by suppliers per unit of electricity, gas or heat;
- (b) payments granted to SMEs, be it directly or via suppliers, per unit of electricity, gas or heat consumption compensating for part of the costs of that consumption.

2. The measures pursuant to paragraph (1) shall:

- (a) be limited to maximum 70% of the beneficiary's consumption of electricity, gas or heat produced from natural gas or electricity over the period covered by the aid measure;
- (b) discriminate neither between suppliers nor between SMEs;
- (c) provide for compensation of suppliers, if the public intervention requires them to supply below cost;
- (d) provide that all suppliers are eligible to provide offers for the supply of electricity, gas or heat on the same basis;
- (e) provide for a mechanism that, if granted via a supplier, ensures that the aid is passed on to the largest extent possible to the final beneficiary; and
- (f) result in an average unit price of supplies at least equal to the average price per unit of electricity, gas, or heat respectively to final customers in the Member State concerned over the period from 1 January to 31 December 2021.

3. Payments made to suppliers for supplies provided to SMEs, as imposed by public interventions in price setting below the cost of the supplier, 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) the public intervention in price setting meets the requirements set out in paragraph (2); and

- (b) the compensation payment shall not exceed the difference between the price that the supplier could have expected to achieve when applying market-based supply prices without the intervention and the price set below cost by the public intervention.

4. This Article shall apply to aid granted for the cost of electricity, gas or heat which is consumed during a period where public interventions in price setting for the benefit of SMEs that receive supplies of either gas, electricity or heat are expressly allowed pursuant to secondary legislation based on Article 122 TFEU. The granting of aid shall occur no later than 12 months after the end of this period.

5. The aid amount shall be equal to the payment granted either to the SME or the supplier, or, in the case of public interventions in price setting, shall not exceed the difference between the market price that would have had to be paid for the total energy consumed by a beneficiary, and the price to be paid for this consumption following the public intervention.

* Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261I, 7.10.2022, p. 1).”;

(17) in Article 20a, paragraph 2 is replaced by the following:

“2. The total amount of aid under this Article granted to an undertaking per project shall not exceed EUR 22 000.”;

(18) Article 21 is replaced by the following:

“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 that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Member States, either directly or through an entrusted entity, shall implement the risk finance measure via one or more financial intermediaries. Member States or entrusted entities shall provide a public contribution to financial intermediaries in line with paragraphs 9 to 13; and financial intermediaries, in line with paragraphs 14 to 17, shall make risk finance investments in line with paragraphs 4 to 8, into eligible undertakings that comply with paragraph 3. Neither Member States nor entrusted entities shall invest directly into the eligible undertakings without the involvement of a financial intermediary.

3. Eligible undertakings shall be undertakings that are unlisted SMEs and fulfil, at the time of the initial risk finance investment, at least one of the following conditions:

- (a) they have not been operating in any market;
- (b) they have been operating in any market for any of the following
- (i) less than 10 years following their registration; or
 - (ii) less than seven years after their first commercial sale.

Where one of the eligibility periods referred to in point (b) has been applied to a given undertaking, only that period can be applied also to any subsequent risk finance aid to the same undertaking. For undertakings that have acquired another undertaking or were formed through a merger, the eligibility period applied shall also encompass the operations of the acquired undertaking or the merged undertakings, respectively, except for such acquired or merged undertakings whose turnover accounts for less than 10 % of the turnover of the acquiring undertaking in the financial year preceding the acquisition or, in case of undertakings formed through a merger, less than 10 % of the combined turnover that the merging undertakings had in the financial year preceding the merger. Concerning the eligibility period referred to in point (i), if applied, for undertakings that are not subject to registration, the eligibility period shall start from either the moment when the undertaking starts its economic activity or the moment when it becomes liable to tax with regard to its economic activity, whichever is earlier;

(c) they require an initial investment which, based on a business plan prepared in view of a new economic activity, is higher than 50 % of their average annual turnover in the preceding five years. By derogation from the first sentence, that threshold shall be limited to 30 % with regard to the following investments, which shall be considered initial investments into a new economic activity:

- (i) investments significantly improving the environmental performance of the activity in accordance with Article 36(2);
- (ii) other environmentally sustainable investments as defined in Article 2(1) of Regulation (EU) 2020/852;
- (iii) investments aiming at increasing capacity for the extraction, separation, refining, processing or recycling of a critical raw material listed in Annex IV.

4. The risk finance investment may also cover follow-on investments made in eligible undertakings, including after the eligibility period referred to in paragraph 3, point (b), if the following cumulative conditions are fulfilled:

- (a) the total amount of risk finance referred to in paragraph 8 is not exceeded;
- (b) the possibility of follow-on investments was provided for in the original business plan;
- (c) the undertaking receiving the follow-on investments has not become a ‘linked enterprise’, within the meaning of Article 3(3) of Annex I, with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity is an SME.

5. Risk finance investments into eligible undertakings may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof.

6. When guarantees are provided, the guarantee shall not exceed 80 % of the underlying loan to the eligible undertaking.

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

8. The total outstanding amount of risk finance investment referred to in paragraph 5 shall not exceed EUR 16.5 million per eligible undertaking under any risk finance measure. In order to calculate this maximum risk finance investment amount, the following shall be taken into account:

- (a) in the case of loans and quasi-equity investments structured as debt, the nominal outstanding amount of the instrument;
- (b) in the case of guarantees, the nominal outstanding amount of the underlying loan.

9. The public contribution provided to financial intermediaries may take one of the following forms:

- (a) equity or quasi-equity, or financial endowment to provide risk finance investment directly or indirectly to eligible undertakings;
- (b) loans to provide risk finance investment directly or indirectly to eligible undertakings;
- (c) guarantees to cover losses from risk finance investment directly or indirectly to eligible undertakings.

10. Risk-reward sharing arrangements between, on the one hand, the Member State (or its entrusted entity) and, on the other hand, private investors, financial intermediaries or fund managers, shall be adequate and shall comply with the following conditions:

- (a) for risk finance aid in forms other than guarantees, prioritised returns from profits (asymmetric profit sharing or upside incentives) shall be given preference over protection against potential losses (downside protection);
- (b) in the case of asymmetric loss-sharing between public and private investors, the first loss borne by the public investor shall be capped at 25 % of the risk finance investment;
- (c) for risk finance aid in the form of guarantees, the guarantee rate shall be limited to 80 % 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 may 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.

11. Where the public contribution provided to the financial intermediary takes the form of equity and quasi-equity as referred to in paragraph 9, point (a), no more than 30 % of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

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

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

- (b) 40 % of the risk finance investment provided to the eligible undertakings referred to in paragraph 3 point (b);
- (c) 60 % of the risk finance investment provided to the eligible undertakings referred to in paragraph 3, point (c) and for follow-on risk finance investment in eligible undertakings after the eligibility period referred to in paragraph 3, point (b).

Finance provided by independent private investors benefitting from risk finance aid in the form of tax incentives in accordance with Article 21a shall not be taken into account for the purposes of reaching the aggregate private participation rates set out in the first subparagraph.

The private participation rates mentioned in the first subparagraph, points (b) and (c), shall be reduced to 20 % under point (b) and 30 % under point (c) for investments that are either: made in assisted areas designated in an approved regional aid map in force at the time of provision of the risk finance investment in application of Article 107(3), point (a), of the Treaty; or that receive support on the basis of the Member State's recovery and resilience plan as approved by the Council of the European Union; or receive support from the European Defence Fund in accordance with Regulation (EU) 2021/697 or under the Union Space Programme in accordance with Regulation (EU) 2021/696 of the European Parliament and of the Council;* or that receive support from Union funds implemented under shared management covered by Regulation (EU) 1303/2013, Regulation (EU) 2021/1060 or Regulation (EU) 2021/2115 of the European Parliament and of the Council**.

13. Where a risk finance measure is implemented through a financial intermediary targeting eligible undertakings at different development stages as referred to in paragraphs 3 and 4, the financial intermediary shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in the underlying portfolio and resulting from the application of the minimum participation rates to such investments as referred to in paragraph 12, unless the required participation from independent private investors is achieved at the level of the eligible undertakings.

14. Financial intermediaries and fund managers shall be selected through an open, transparent and non-discriminatory procedure in accordance with applicable Union and national laws. Member States may require that eligible financial intermediaries and fund managers fulfil predefined criteria objectively justified by the nature of the investments. The procedure shall be based on objective criteria linked to experience, expertise and operational and financial capacity, and shall comply with the following cumulative conditions:

- (a) it shall ensure that eligible financial intermediaries and fund managers are established in accordance with the applicable laws;
- (b) it shall not discriminate between financial intermediaries and fund managers on the basis of their place of establishment or incorporation in any Member State;
- (c) it shall aim at establishing adequate risk-reward sharing arrangements as referred to in paragraph 10, and profit-driven decisions as referred to in paragraph 15.

15. Risk finance measures shall ensure that the financial intermediaries receiving the public contribution take profit-driven decisions when providing eligible undertakings with risk finance investments. This obligation is met where the following cumulative conditions are fulfilled:

- (a) 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;

- (b) risk finance investments 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;
- (c) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.

16. Financial intermediaries shall be managed on a commercial basis. This requirement is met where the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following cumulative conditions:

- (a) they shall be obliged by law or contract to act in accordance with best practices and with the diligence of a professional manager acting in good faith and avoiding conflicts of interest; regulatory supervision shall apply, where relevant;
- (b) their remuneration shall conform to market practices. This requirement is presumed to be met as long as they are selected through an open, transparent and non-discriminatory selection procedure in accordance with in paragraph 14;
- (c) they shall share part of the investment risks by either co-investing their own resources or receiving a remuneration linked to performance, so as to ensure that their interests are permanently aligned with the interests of the Member State or its entrusted entity;
- (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, if any.

17. In a risk finance measure where risk finance investment is provided to eligible undertakings in the form of guarantees, loans or quasi-equity investments structured as debt, the financial intermediary shall undertake risk finance investments into eligible undertakings that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the eligible undertakings in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

18. Risk finance measures providing risk finance investments for SMEs that do not fulfil the conditions laid down in paragraph 3 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the following cumulative conditions are fulfilled:

- (a) at the level of the SMEs, the aid fulfils the conditions laid down in Commission Regulation (EU) No 1407/2013***, Commission Regulation (EU) No 1408/2013**** or Commission Regulation (EU) No 717/2014*****, whichever is applicable;

- (b) all the conditions laid down in this Article are fulfilled, with the exception of the conditions set out in paragraphs 3, 4, 8, 12 and/or 13;
- (c) for risk finance measures providing risk finance investments to eligible undertakings in the form of equity, quasi-equity or loans, 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.

The private participation rate mentioned in the first subparagraph, point (c), shall be reduced to 30 % for investments that are either: made in assisted areas designated in an approved regional aid map in force at the time of provision of the risk finance investment in application of Article 107(3), point (a), of the Treaty; or that receive support on the basis of the Member State's recovery and resilience plan as approved by the Council of the European Union; or receive support by the European Defence Fund (Regulation (EU) 2021/697) or under the Union Space Programme (Regulation (EU) 2021/696) or by EU Funds implemented under shared management covered by Regulation (EU) 1303/2013 or Regulation (EU) 2021/1060 or Regulation (EU) 2021/2115.

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

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

*** Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1).

**** Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9).

***** Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).”;

- (19) the following Article 21a is inserted:

“Article 21a

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

1. Risk finance aid schemes in favour of SMEs in the form of tax incentives to independent private investors who are natural persons providing risk finance directly or indirectly to eligible undertakings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Eligible undertakings are those that fulfill the criteria laid down in Article 21(3). The total risk finance investment provided under Article 21 and under this Article to each eligible undertaking shall not exceed the maximum amount laid down in Article 21(8).

3. Where the independent private investor provides risk finance indirectly through a financial intermediary, the eligible investment shall take the form of the acquisition of shares or participations in the financial intermediary, which shall in turn provide risk finance investments to eligible undertakings in accordance with Article 21(5) to (8). No tax incentive may be granted in respect of the services provided by the financial intermediary or its managers.

4. Where the independent private investor provides risk finance directly to the eligible undertaking, only the acquisition of newly issued full-risk ordinary shares issued by an eligible undertaking shall constitute an eligible investment. Those shares shall be kept for at least three years. Replacement capital shall only be covered under the conditions laid down in Article 21(7). Concerning the possible forms of tax incentives, losses arising upon disposal of the shares may be set-off against income tax. In the case of tax relief on dividends, any dividend received in respect of qualifying shares may be (fully or partially) exempt from income tax. Any profit on the sale of qualifying shares may be either (fully or partially) exempt from capital gains tax or the tax liability with respect to such profit may be deferred if reinvested in new qualifying shares within one year.

5. Where the independent private investor provides risk finance directly to the eligible undertaking, in order to ensure an adequate participation of such independent private investor, in accordance with Article 21(12), the tax relief, counted as the cumulative maximum tax relief from all tax incentives combined, shall not surpass the following maximum thresholds:

- (a) 50 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 21(3), point (a);
- (b) 35 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 21(3), point (b);
- (c) 20 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 21(3), point (c) or of a follow-on eligible investment into an eligible undertaking after the eligibility period referred to in Article 21(3), point (b).

The tax relief thresholds for the direct investments mentioned in the first subparagraph, may be increased up to 65% under point (a), up to 50 % under point (b) and up to 35 % under point (c) for investments that are either: made in assisted areas designated in an approved regional aid map in force at the time of provision of the risk finance investment in application of Article 107(3), point (a), of the Treaty; or that receive support on the basis of the Member State's recovery and resilience plan as approved by the Council of the European Union; or receive support from the European Defence Fund in accordance with Regulation (EU) 2021/697 or under the Union Space Programme in accordance with Regulation (EU) 2021/696; or that receive support from Union funds implemented under shared management covered by Regulation (EU) 1303/2013 or Regulation (EU) 2021/1060 or Regulation (EU) 2021/2115.

6. Where the independent private investor provides risk finance indirectly through a financial intermediary, and in accordance with Article 21(12), the tax relief, counted as the cumulative maximum tax relief from all tax incentives combined, shall not surpass 30% of the eligible investment carried out by the independent private investor into an eligible undertaking referred

to in Article 21(3). This tax relief threshold may be increased up to 50% for investments that are either: made in assisted areas designated in an approved regional aid map in force at the time of provision of the risk finance investment in application of Article 107(3), point (a) of the Treaty; or that receive support on the basis of the Member State's recovery and resilience plan as approved by the Council of the European Union; or receive support from the European Defence Fund in accordance with Regulation (EU) 2021/697 or under the Union Space Programme in accordance with Regulation (EU) 2021/696; or that receive support from Union funds implemented under shared management covered by Regulation (EU) 1303/2013 or Regulation (EU) 2021/1060 or Regulation (EU) 2021/2115.”;

(20) Article 22 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. Eligible undertakings shall be any unlisted small enterprise up to five years following its registration, that fulfils the following cumulative conditions:

- (a) it has not taken over the activity of another undertaking, unless the turnover of the overtaken activity accounts for less than 10% of the turnover of the eligible undertaking in the financial year preceding the take-over;
- (b) it has not yet distributed profits;
- (c) it has not acquired another undertaking or has not been formed through a merger, unless the turnover of the acquired undertaking accounts for less than 10% of the turnover of the eligible undertaking in the financial year preceding the acquisition or the turnover of the merged undertaking formed through a merger is less than 10% higher than the combined turnover that the merging undertakings had in the financial year preceding the merger.

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

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

(b) paragraph 3 is replaced by the following:

“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 1.1 million, or EUR 1.65 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty, or EUR 2.2 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty. For loans with a duration comprised between five years and 10 years the maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. For loans with a duration of less than five

years, the maximum amount shall be the same as for loans with a duration of five years;

- (b) guarantees with premiums which are not conform with market conditions, with a duration of 10 years and up to maximum EUR 1.65 million of amount guaranteed, or EUR 2.48 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty, or EUR 3.3 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty. For guarantees with a duration comprised between five years 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 five years, the maximum amount guaranteed shall be the same as for guarantees with a duration of five years. The guarantee shall not exceed 80 % of the underlying loan;
- (c) grants, including equity or quasi equity investment, interests rate and guarantee premium reductions up to EUR 0,5 million gross grant equivalent or EUR 0,75 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty, or EUR 1 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty;
- (d) tax incentives to eligible undertakings up to EUR 0,5 million gross grant equivalent or EUR 0,75 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty, or EUR 1 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty.”;

(c) the following paragraph 6 is added:

“6. Where a start-up aid scheme is implemented through one or more financial intermediaries, the conditions applying to financial intermediaries laid down in Article 21(10), (14), (15), (16) and (17), shall apply.”;

(d) the following paragraph 7 is added:

“7. In addition to the amounts in paragraphs 3, 4 and 5, start-up aid schemes can take the form of either a transfer of intellectual property (IP) or a grant of the related access rights, either free of charge or below market value. The transfer or the grant shall be from a research and knowledge-dissemination organisation, within the meaning of Article 2(82), that has developed the underlying IP through its independent own or collaborative research and development activity, to an eligible undertaking within the meaning paragraph 2. The transfer or the grant shall fulfill all of the following conditions:

- (a) the purpose of the transfer of IP or the grant of related access rights is to bring a new product or service to the market; and
- (b) the value of the IP is set at its market price, which is the case if it has been set according to one of the following methods:
 - (i) the amount has been established by means of an open, transparent and non-discriminatory competitive procedure;

- (ii) an independent expert valuation confirms that the amount is at least equal to the market price;
- (iii) in cases where the eligible undertaking has a right of first refusal as regards the IP generated in collaboration with the research and knowledge-dissemination organisation, where the research and knowledge-dissemination organisation exercises a reciprocal right to solicit more economically advantageous offers from third parties so that the collaborating eligible undertaking has to match its offer accordingly.

The value of any contribution, both financial and non-financial, of the eligible undertaking to the costs of the research and knowledge-dissemination organisation's activities that resulted in the IP concerned may be deducted from the value of the IP referred to in point (b).

- (c) The aid amount of the IP transfer or the grant of the related access rights under this paragraph shall not exceed EUR 1 million. The aid amount corresponds to the value of the IP referred to in point (b), less the above-mentioned deduction referred to in the last sentence of point (b) and less any remuneration due from the beneficiary for that IP. The value of the IP referred to in point (b) can exceed EUR 1 million, in which case such additional amount may be covered by the eligible undertaking with own funds or other means.”;

- (21) in Article 23(2), the second subparagraph is replaced by the following:

“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 21a(2) and (5).”;

- (22) Article 24 is amended as follows:

- (a) paragraphs 2 and 3 are replaced by the following:

“2. The eligible costs shall be:

- (a) the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings pursuant to Articles 21, 21a and 22;
- (b) the costs for investment research, as defined in Article 36(1) of Commission Delegated Regulation 2017/565*, in an individual eligible undertaking pursuant to Articles 21, 21a and 22, provided this research is publicly disseminated, and, if it has been disseminated to clients of the investment research provider before public dissemination, is disseminated publicly in the same form and no later than three months after the first dissemination to clients.

3. Investment research referred to in paragraph 2, point (b), of this Article shall fulfil the requirements laid down in Articles 36 and 37 of Delegated Regulation (EU) 2017/565.

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

(b) the following paragraph 4 is inserted:

“4. The aid intensity shall not exceed 50 % of the eligible costs.”;

(23) Article 25 is amended as follows:

(a) in paragraph 3, point (e) is replaced by the following:

“(e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project; without prejudice to Article 7(1), third sentence, such R&D project costs may alternatively be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to 20 %, applied to total eligible R&D project costs referred to in point (a) to (d). In this case, the R&D project costs used for the calculation of the indirect costs shall be established on the basis of normal accounting practices and shall comprise only eligible R&D project costs referred to in points (a) to (d).”;

(b) paragraph 6 is replaced by the following:

“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 in line with the following points (a) to (d), where points (b), (c) and (d) must not be combined with each other:

(a) by 10 percentage points for medium-sized enterprises and by 20 percentage point 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;

(iii) the beneficiary commits to, on a timely basis, make available licences for research results of aided R&D projects, which are protected by intellectual property rights, at a market price and on non-exclusive and non-discriminatory basis for use by interested parties in the EEA;

(iv) the R&D project is carried out in an assisted region fulfilling the conditions of Article 107(3)(a) of the Treaty;

(c) by 5 percentage points if the R&D project is carried out in an assisted region fulfilling the conditions of Article 107(3)(c) of the Treaty;

- (d) by 25 percentage points if the R&D project:
- (i) has been selected by a Member State following an open call to form part of a project jointly designed by at least three Member States or contracting parties to the EEA Agreement; and
 - (ii) involves effective collaboration between undertakings in at least two Member States or contracting parties to the EEA Agreement when the beneficiary is a SME, or in at least three Member States or contracting parties to the EEA Agreement when the beneficiary is a large enterprise; and
 - (iii) if at least one the two following conditions is fulfilled:
 - the results of the R&D project are widely disseminated in at least three Member States or contracting parties to the EEA Agreement through conferences, publication, open access repositories, or free or open source software; or
 - the beneficiary commits to, on a timely basis, make available licences for research results of aided R&D projects, which are protected by intellectual property rights, at a market price and on non-exclusive and non-discriminatory basis for use by interested parties in the EEA.”;

(24) the following Article 25e is inserted:

“Article 25e

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

1. Aid provided to co-fund a research and development project funded by the European Defence Fund or the European Defence Industrial Development Programme and which is evaluated, ranked and selected in line with the European Defence Fund or the European Defence Industrial Development Programme rules, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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 of the aided project shall be those defined as eligible under the European Defence Fund or the European Defence Industrial Development Programme rules.

3. The total public funding provided can reach up to 100% of the eligible costs of the project, meaning that the costs of the project not covered by Union funding can be covered by State aid.

4. In case the aid intensity received by the beneficiary exceeds the maximum aid intensity the beneficiary could have received under Article 25, paragraphs 5 to 7, the beneficiary must pay a market price to the granting authority to use for non-defence applications the intellectual property rights or prototypes resulting from the project. In any event, the maximum amount to be paid to the granting authority for this use shall not exceed the difference between the aid received by the beneficiary and the maximum amount of aid the beneficiary could have received applying the maximum aid intensity allowed for that beneficiary under Article 25, paragraphs 5 to 7.”;

(25) Article 26 is amended as follows:

(a) paragraph 6 is replaced by the following:

“The aid intensity shall not exceed 50 % of the eligible costs. The aid intensity may be increased up to 60% subject to at least two Member States providing the public funding, or for a research infrastructure evaluated and selected at Union level.”

(26) the following Article 26a is inserted:

“Article 26a

Investment aid for testing and experimentation infrastructures

1. Aid for the construction or upgrade of testing and experimentation 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. The price charged for the operation or use of the infrastructure shall correspond to a market price or reflect their costs plus a reasonable margin in the absence of a market price.

3. 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.

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

5. The aid intensity shall not exceed 25 % of the eligible costs.

6. The aid intensity may be increased up to a maximum aid intensity of 40%, 50% and 60% of the eligible investment costs of large, medium and small sized enterprises respectively as follows:

- a) by 10 percentage points for medium sized enterprises and 20 percentage points for small enterprises;
- b) by additional 10 percentage points for cross-border testing and experimentation infrastructures which are subject to at least two Member States providing the public funding or for testing and experimentation infrastructures evaluated and selected at Union level;
- c) by additional 5 percentage points for testing and experimentation infrastructures of which at least 80% of annual capacity is allocated to SMEs.”;

(27) Article 27 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. Investment aid can be granted to the owner of the innovation cluster. Operating aid can be granted to the operator of the innovation cluster. The operator, when different from the owner, can either have a legal personality or be a consortium of undertakings without a separate legal

personality. In all instances separate accounting for the costs and revenues of each activity (ownership, operation and use of the cluster) has to be kept according to the applicable accounting standards by each undertaking.”;

(b) paragraph 4 is replaced by the following:

“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 including a reasonable margin.”;

(28) Article 28 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

“(c) costs for innovation advisory and support services, including those services provided by research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters.”;

(b) paragraph 4 is replaced by the following:

“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 220 000 per undertaking within any three year period.”;

(29) Article 36 is amended as follows:

(a) the heading and paragraph 1 are replaced by the following:

“Article 36

Investment aid for environmental protection, including decarbonisation

1. Investment aid for environmental protection, including aid for the reduction and removal of greenhouse gas emissions , shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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.”;

(b) the following paragraph 1a is inserted:

“1a. This Article shall not apply to measures for which more specific rules are laid down in Articles 36a, 36b and 38 to 48. This Article shall also not apply to investments in equipment, machinery and industrial production facilities using fossil fuels, including those using natural gas. This is without prejudice to the possibility to grant aid for the installation of add-on components improving the level of environmental protection of existing equipment, machinery and industrial production facilities, in which case the investment shall result neither in the expansion of the production capacity nor higher consumption of fossil fuels.”;

(c) the following paragraph 1b is inserted:

“1b. This Article shall also apply to investments in equipment and machinery using, and infrastructure transporting, hydrogen to the extent that the hydrogen used or transported

qualifies as renewable hydrogen. It shall also apply to investments in equipment and machinery using hydrogen-derived fuels the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.

This Article shall also apply to aid for investments in installations, equipment and machinery producing or using, and dedicated infrastructure referred to in Article 2, point (130) last paragraph, transporting hydrogen produced from electricity and which does not qualify as renewable hydrogen, to the extent that it can be demonstrated that the electricity-based hydrogen produced, used or transported achieves life-cycle greenhouse gas emissions savings of at least 70 % relative to a fossil fuel comparator of 94g CO₂eq/MJ (2.256 tCO₂eq/tH₂). To determine the life-cycle greenhouse gas emissions savings under this subparagraph, the greenhouse gas emissions linked to the production of electricity used to produce hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid.

In the cases referred to in the first and second subparagraphs, only hydrogen fulfilling the conditions set out in those subparagraphs shall be used, transported or – where relevant – produced throughout the lifetime of the investment. The Member State shall obtain a commitment to that effect.”;

(d) paragraph 2 is amended as follows:

(i) points (a) and (b) are replaced by the following:

“(a) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary, beyond Union standards in force, irrespective of the presence of mandatory national standards that are more stringent than the Union standards; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130) last paragraph, for hydrogen within the meaning of paragraph 1b, waste heat or CO₂ or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO₂, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain; or

(b) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary in the absence of Union standards; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130) last paragraph for hydrogen within the meaning of paragraph 1b, waste heat or CO₂ or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO₂, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain; or”;

(ii) the following point (c) is added:

“(c) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary to comply with Union standards that have been adopted but are not yet in force; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130), last paragraph,

for hydrogen within the meaning of paragraph 1b, waste heat or CO₂ or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO₂, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain.”;

(e) the following paragraph 2a and 2b are inserted:

“2a. Investments in CO₂ capture and transport shall fulfil the following cumulative conditions:

- (a) the CO₂ capture and/or transport, including individual elements of the CCS or CCU chain, shall be integrated into a complete CCS and/or CCU chain;
- (b) the net present value (‘NPV’) of the investment project over its lifetime shall be negative. For the purpose of calculating the project’s NPV, the avoided costs of CO₂ emissions shall be taken into account;
- (c) the eligible costs shall be exclusively the additional investment costs stemming from capturing the CO₂ from a CO₂-emitting installation (industrial installation or power plant) or directly from ambient air as well as from buffer storage and transportation of captured CO₂ emissions.

2b. When the aid aims at reducing or avoiding direct emissions, the aid must not merely displace the emissions concerned from one sector to another and must overall reduce the targeted emissions; in particular, when the aid aims at reducing greenhouse gas emissions, the aid must not merely displace these emissions from one sector to another and must reduce them overall.”;

(f) paragraphs 3 to 6 are replaced by the following:

“3. Aid shall not be granted where investments are undertaken to ensure that undertakings merely comply with the Union standards in force. Aid enabling undertakings to comply with Union standards that have been adopted but not yet in force may be granted under this Article provided that the investment for which the aid is granted is implemented and finalised at least 18 months before the date of entry into force of the standard concerned.

4. The eligible costs shall be the extra investment costs determined by comparing the costs of the investment to those of a counterfactual scenario that would occur in the absence of the aid, as follows:

- (a) where the counterfactual scenario consists in carrying out a less environmentally-friendly investment that corresponds to normal commercial practice in the sector or for the activity concerned, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the costs of the less environmentally-friendly investment;
- (b) where the counterfactual scenario consists in carrying out the same investment at a later point in time, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the costs of the later investment, discounted to the point in time when the aided investment would be undertaken;
- (c) where the counterfactual scenario consists in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the

investments in the maintenance, repair and modernisation of the existing installations and equipment, discounted to the point in time when the aided investment would be undertaken;

- (d) in the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in Net Present Value between the leasing of equipment for which State aid is granted and the leasing of the less environmentally-friendly equipment that would be leased in the absence of the aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract.

In all situations listed under points (a) to (d), the counterfactual scenario shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual scenario shall be credible in the light of legal requirements, market conditions and incentives generated by the EU ETS system.

Where the investment for which State aid is granted consists in the installation of an add-on component to an already existing facility, for which there is no less environmentally-friendly counterfactual investment, the eligible costs shall be the total investment costs.

Where the investment for which State aid is granted consists in the construction of dedicated infrastructure referred to in Article 2, point (130), last paragraph, for hydrogen within the meaning of paragraph 1b, waste heat or CO₂, that is necessary to enable the increase in the level of environmental protection as referred to in paragraphs 2 and 2a, the eligible costs shall be the total investment costs. Costs for the construction or upgrade of storage facilities, with the exception of storage facilities for renewable hydrogen and hydrogen covered by paragraph 1b second sub-paragraph, shall not be eligible.

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

5. The aid intensity shall not exceed 40 % of the eligible costs. Where the investment, with the exception of those which rely on the use of biomass, results in a 100 % reduction of the direct greenhouse gas emissions, the aid intensity may reach 50 %.

6. In case of investments relating to CCS and/or CCU, the aid intensity shall not exceed 30 % of the eligible costs.”;

(g) the following paragraphs 9, 10 and 11 are inserted:

“9. The aid intensity may reach 100 % of the investment costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

- (a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;
- (b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

- (c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;
- (d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure, for example the aid requested per unit of environmental protection to be delivered.

10. Alternatively to paragraphs 4 to 9, the aid amount shall not exceed the difference between the investment costs directly linked to the achievement of a higher level of environmental protection 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 and verified *ex post* through a claw-back mechanism.

11. By way of derogation from paragraphs 4(a) to 4(d), 9 and 10, the eligible costs may be determined without the identification of the counterfactual scenario and in the absence of a competitive bidding process. In that case, the eligible costs shall be the investment costs directly linked to the achievement of a higher level of environmental protection and the applicable aid intensities and bonuses set out in paragraphs 5, 6, 7 and 8 are reduced by 50%.”;

- (30) Article 36a is replaced by the following:

“Article 36a

Investment aid for recharging or refuelling infrastructure

1. Investment aid for recharging or refuelling infrastructure shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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. This Article shall only cover aid granted for recharging or refuelling infrastructures that supply vehicles, mobile terminal equipment or mobile groundhandling equipment with electricity or hydrogen. For aided refuelling infrastructure supplying hydrogen, the Member State shall obtain from the beneficiary a commitment that by 2035 at the latest, the refuelling infrastructure will solely supply renewable hydrogen. This Article does not apply to aid for investments relating to recharging and refuelling infrastructure in ports.

3. The eligible costs shall be the costs of the construction, installation, upgrade or extension of recharging or refuelling infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself and related technical equipment, the installation of or upgrades to electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, as well as civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.

The eligible costs may also cover the investment costs of on-site production of renewable electricity or renewable hydrogen, and the investment costs of storage units for storing renewable electricity or hydrogen. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.

4. Aid under this Article shall be granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

- (a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;
- (b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;
- (c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;
- (d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure for example aid requested per recharging or refuelling point.

5. Where the aid is granted in a competitive bidding process complying with the conditions of paragraph 4, the aid intensity may reach up to 100 % of the eligible costs.

6. By derogation from paragraph 4, aid may be granted in the absence of a competitive bidding process when the aid is granted based on an aid scheme. In this case, the aid intensity shall not exceed 20% of the eligible costs. The aid intensity may be increased by 20 percentage points for medium-sized enterprises and by 30 percentage points for small enterprises. The aid intensity may also be increased by 15 percentage points for investments located in assisted areas designated in an approved regional aid map in force at the time of provision of the aid in application of in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas designated in an approved regional aid map in force at the time of provision of the aid in application of Article 107(3), point (c), of the Treaty.

7. The aid granted to any one undertaking shall not exceed 40 % of the total budget of the scheme concerned.

8. Where the recharging or refuelling infrastructure is open for access by users other than the aid beneficiary or beneficiaries, aid shall only be granted for the construction, installation, upgrade or extension of recharging or refuelling infrastructure accessible to the public and providing non-discriminatory access to users, including in relation to tariffs, authentication and payment methods and other terms and conditions of use. The fees charged to users other than the aid beneficiary or beneficiaries for using the recharging or refuelling infrastructure shall correspond to market prices.

9. Operators of recharging or refuelling infrastructure that offer or allow contract-based payments on their infrastructure shall not discriminate between mobility service providers, for example by applying preferential access conditions, or through price differentiation without an objective justification.

10. The necessity of aid to invest in recharging or refuelling infrastructure of the same category as the one to be supported with aid (for example, for recharging infrastructure: normal or high power) shall be established through an *ex ante* open public consultation or an independent market study, which are no older than one year at the moment of the entry into force of the aid

measure. In particular, it shall be established that no such investment is likely to take place on commercial terms within three years from the entry into force of the aid measure.

The obligation to conduct an *ex ante* open public consultation or an independent market study laid down in the first subparagraph shall not apply to aid for the construction, installation, upgrade or extension of recharging or refuelling infrastructure that is not accessible to the public.

11. By way of derogation from paragraph 10, the necessity of aid for recharging or refuelling infrastructure for road vehicles shall be presumed where vehicles powered exclusively by electricity (for recharging infrastructures) or vehicles powered at least partially by hydrogen (for refuelling infrastructures) represent respectively less than 3 % of the total number of vehicles of the same category registered in the Member State concerned. For the purpose of this paragraph, passenger cars and light-duty commercial vehicles shall be considered as being part of the same category of vehicles.

12. Any concession or other entrustment to a third party to operate the supported recharging or refuelling infrastructure shall be assigned on a competitive, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

13. Where aid is granted for the deployment of new recharging infrastructure that allows for a transfer of electricity with a power output of less than or equal to 22 kW, the infrastructure must be capable of supporting smart recharging functionalities.”;

(31) the following Article 36b is inserted:

“Article 36b

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

1. Investment aid for the acquisition of clean vehicles or zero-emission vehicles for road, railway, inland waterway and maritime transport and for the retrofitting of vehicles other than aircraft to qualify as clean vehicles or as zero-emission vehicles shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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 the purchase or the leasing for a duration of at least 12 months of clean vehicles powered at least partially by electricity or by hydrogen or zero-emission vehicles and for the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles.

3. The eligible costs shall be the following:

- (a) for investments consisting in the purchase of clean vehicles or zero-emission vehicles, the extra costs of purchasing the clean vehicle or the zero-emission vehicle. Those shall be calculated as the difference between the investment costs of purchasing the clean vehicle or the zero-emission vehicle and the investment costs of purchasing a vehicle of the same category that complies with applicable Union standards already in force and would have been acquired without the aid;

- (b) for investments consisting in the leasing of clean vehicles or zero-emission vehicles, the extra costs of leasing the clean vehicle or the zero-emission vehicle. Those shall be calculated as the difference between the net present value of leasing the clean vehicle or the zero-emission vehicle and the net present value of leasing a vehicle of the same category that complies with applicable Union standards already in force and would have been leased without the aid. For the purposes of determining the eligible costs, the operating costs linked to the operation of the vehicle, including energy costs, insurance costs and maintenance costs, shall not be taken into account, irrespective of whether they are included in the leasing contract;
- (c) for investments consisting in the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles, the costs of the investment in the retrofitting.

4. Aid under this Article shall be granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

- (a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;
- (b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;
- (c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;
- (d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure for example aid requested per clean or zero-emission vehicle.

5. Where the aid is granted in a competitive bidding process complying with the conditions of paragraph 4, the aid intensity shall not exceed:

- (a) 100 % of the eligible costs for the purchase or the leasing of zero-emission vehicles or the retrofitting of vehicles allowing them to qualify as zero-emission vehicles;
- (b) 80 % of the eligible costs for the purchase or the leasing of clean vehicles, or of the retrofitting of vehicles allowing them to qualify as clean vehicles.

6. By derogation from paragraph 4, aid may be granted outside of a competitive bidding process when the aid is granted based on an aid scheme.

In those cases, the aid intensity shall not exceed 20% of the eligible cost. The aid intensity may be increased by 10 percentage points for zero-emission vehicles and by 20 percentage points for medium-sized enterprises or by 30 percentage points for small enterprises.

7. By derogation from paragraph 4, aid may also be granted outside of a competitive bidding process when the aid is granted for undertakings that have been awarded a public service contract for the provision of public passenger transport services by land, rail or water following an open, transparent and non-discriminatory public tender only in relation to the acquisition of

clean vehicles or zero-emission vehicles used for the provision of the public passenger transport services subject to the public service contract.

In this case, the aid intensity shall not exceed 40% of the eligible cost. The aid intensity may be increased by 10 percentage points for zero-emission vehicles.”;

(32) Article 37 is deleted.

(33) Article 38 is amended as follows:

(a) the title is replaced by the following:

“Article 38

Investment aid for energy efficiency measures other than in buildings”;

(b) paragraphs 1 and 2 are replaced by the following:

“1. Investment aid enabling undertakings to improve energy efficiency other than in buildings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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 for investments undertaken to comply with Union standards that have been adopted and are in force. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalised at least 18 months before the standard enters into force.”;

(c) the following paragraphs 2a and 2b are inserted:

“2a. This Article shall not apply to aid for cogeneration and aid for district heating and/or cooling.

2b. Aid for the installation of energy equipment fired by fossil fuels, including natural gas, shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.”;

(d) paragraph 3 is replaced by the following:

“3. The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined by comparing the costs of the investment to those of the counterfactual scenario that would occur in the absence of the aid, as follows:

(a) where the counterfactual scenario consists in carrying out a less energy-efficient investment that corresponds to normal commercial practice in the sector or for the activity concerned, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the costs of the less energy-efficient investment.

(b) where the counterfactual scenario consists in carrying out the same investment at a later point in time, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the costs

of the later investment, discounted to the point in time when the aided investment would be undertaken;

- (c) where the counterfactual scenario consists in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the investment in the maintenance, repair and modernisation of the existing installation and equipment, discounted to the point in time when the aided investment would be undertaken;
- (d) In the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in Net Present Value between the leasing of the equipment for which State aid is granted and the leasing of the less energy-efficient equipment that would be leased in the absence of aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract;

In all situations listed under points (a) to (d), the counterfactual shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual shall be credible in the light of legal requirements, market conditions and incentives generated by the EU ETS system.

Where the investment consists in a clearly identifiable investment solely aimed at improving energy efficiency, for which there is no less energy efficient counterfactual investment, the eligible costs shall be the total investment costs.

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

(e) paragraph 3a is deleted;

(f) paragraph 7 is replaced by the following:

“7. The aid intensity may reach 100 % of the total investment costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

- (a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;
- (b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;
- (c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;
- (d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project’s contribution to the environmental objectives of the measure, for example aid requested per unit of energy saved or of energy efficiency gained.

Those criteria shall not account for less than 70 % of the weighting of all the selection criteria.”;

(g) the following paragraph 8 is inserted:

“8. By way of derogation from paragraphs 3(a) to 3(d) and 7, the eligible costs may be determined without the identification of the counterfactual scenario and in the absence of a competitive bidding process. In that case, the eligible costs shall be the total investment costs directly linked to the achievement of a higher level of environmental protection and the applicable aid intensities and bonuses set out in paragraphs 4, 5 and 6 are reduced by 50%.”;

(34) the following Article 38a is inserted:

“Article 38a

Investment aid for energy efficiency measures in buildings

1. Investment aid enabling undertakings to achieve energy efficiency 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. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force.

3. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force. Where the relevant Union standards are minimum energy performance standards, the aid must be granted before the standards become mandatory for the undertaking concerned. In that case, the Member State must ensure that beneficiaries provide a precise renovation plan and timetable demonstrating that the aided renovation is at least sufficient to ensure compliance with the minimum energy performance standards. Where the relevant Union standards are different from minimum energy performance standards, the investment must be implemented and finalised at least 18 months before the Union standard enters into force.

4. This Article shall not apply to aid for cogeneration and aid for district heating and/or cooling.

5. The eligible costs shall be the total investment costs. The costs not directly linked to the achievement of a higher level of energy efficiency in the building shall not be eligible.

6. The aid shall induce an improvement in the energy performance of the building measured in primary energy of at least: (i) 20 % compared to the situation prior to the investment in the case of renovation of existing buildings, or (ii) 10 % compared to the situation prior to the investment in the case of renovation measures concerning the installation or replacement of just one type of building elements as defined in Article 2(9) of Directive 2010/31/EU and such targeted renovation measures do not represent more than 30 % of the part of the scheme’s budget dedicated to energy efficiency measures, or (iii) 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures implementing Directive 2010/31/EU in the case of new buildings. The initial primary energy demand and the estimated improvement shall be established by reference to an Energy Performance Certificate as defined in Article 2(12) of Directive 2010/31/EU.

7. The aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

- (a) the installation of integrated on-site equipment generating electricity, heating or cooling from renewable energy sources, including but not limited to photovoltaic panels and heat pumps;
- (b) the installation of equipment for the storage of the energy generated by the on-site renewable energy installations. The storage equipment shall absorb at least 75 % of its energy from a directly connected renewable energy generation installation, on an annual basis;
- (c) the connection to an energy efficient district heating and/or cooling system and related equipment;
- (d) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the parking facilities are located either inside the building or are physically adjacent to the building;
- (e) the installation of equipment for the digitalisation of the building in particular to increase its smart-readiness, including passive in-house wiring or structured cabling for data networks and the ancillary part of the broadband infrastructure on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property;
- (f) investments in green roofs and equipment for the retention and use of rain water.

In case of any such combined works, as set out in points (a) to (f), the entire investment cost of the various installations and equipment shall constitute the eligible costs. The costs not directly linked to the achievement of a higher level of energy or environmental performance shall not be eligible.

8. The aid may be granted either to the building owner(s) or the tenant(s), depending on who is commissioning the energy efficiency measure.

9. Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building.

10. Aid for the installation of energy equipment fired by fossil fuels, including natural gas, shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

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

12. By way of derogation from paragraph 11, where the investment consists in the installation or replacement of just one type of building element as defined in Article 2(9) of Directive 2010/31/EU, the aid intensity shall not exceed 25 %.

13. By way of derogation from paragraphs 11 and 12, where aid for investments in buildings undertaken to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force, the aid intensity must not exceed 15 % of the eligible costs where the investment consists in the

installation or replacement of just one type of building element as defined in Article 2(9) of Directive 2010/31/EU and 20 % in all other cases.

14. 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.

15. 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.

16. The aid intensity may be increased by 15 percentage points for aid granted to improve the energy efficiency of existing buildings, where the aid induces an improvement in the energy performance of the building measured in primary energy of at least 40 % compared to the situation prior to the investment. This increase in aid intensity does not apply where the investment does not improve the energy performance of the building beyond the level imposed by minimum energy performance standards qualifying as Union standards entering into force within less than 18 months from the moment the investment is implemented and finalised.”;

(35) the following Article 38b is inserted:

“Article 38b

Aid for the facilitation of energy performance contracting

1. Aid for the facilitation of energy performance contracting 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 may be granted under this Article for the facilitation of energy performance contracting within the meaning of Article 2, point (27), of Directive 2012/27/EU.

3. Eligible for aid under this Article are SMEs and small mid-caps that are providers of energy performance improvement measures, and which are the final beneficiaries of the aid.

4. The aid shall take the form of a senior loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consist in a financial product aimed at financing the provider (for example, factoring or forfaiting).

5. The duration of the loan or guarantee to the provider of energy efficiency improvement measures shall not exceed 10 years.

6. Where the aid takes the form of a senior loan, the co-investment by commercial providers of debt funding shall not be lower than 30 % of the value of the underlying portfolio of energy performance contracts, and the repayment by the provider of energy efficiency improvement measures shall at least be equal to the nominal amount of the loan.

7. Where the aid takes the form of a guarantee, the guarantee shall not exceed 80 % of the underlying loan’s principal and losses are sustained proportionally and under the same conditions by the credit institution and the State. The guaranteed amount shall decrease proportionally, in such a way that the guarantee never covers more than 80 % of the outstanding loan.

8. The nominal amount of total outstanding financing provided per beneficiary shall not exceed EUR 30 million.”;

(36) Article 39 is amended as follows:

(a) paragraphs 2, 2a and 3 are replaced by the following:

“2. Eligible for aid under this Article are investments improving the energy efficiency of buildings.

2a. The aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

- (a) the installation of integrated on-site equipment generating electricity, heating or cooling from renewable energy sources, including but not limited to photovoltaic panels and heat pumps;
- (b) the installation of equipment for the storage of the energy generated by the on-site renewable energy installations. The storage equipment shall absorb at least 75 % of its energy from a directly connected renewable energy generation installation, on an annual basis;
- (c) investments in the connection to an energy efficient district heating and/or cooling system and related equipment;
- (d) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the car park is located either inside the building or is physically adjacent to the building;
- (e) the installation of equipment for the digitalisation of the building, in particular to increase its smart-readiness. Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and the ancillary part of the broadband infrastructure on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property;
- (f) investments in green roofs and equipment for the retention and use of rain water.

3. The eligible costs shall be the total costs of the energy efficiency project, except for buildings referred to in paragraph 2a, where the eligible costs shall be the total costs of the energy efficiency project as well as the investment cost of the various pieces of equipment listed in paragraph 2a.”;

(b) in paragraph 5, the first and second sentences are replaced by the following:

“5. The energy efficiency fund or other financial intermediary shall grant loans or guarantees to the eligible energy efficiency projects. The nominal value of the loan or the amount guaranteed shall not exceed EUR 25 million per final beneficiary and project, except in the case of the combined investments referred to in paragraph 2a, where it shall not exceed EUR 30 million.”;

(c) paragraph 7 is replaced by the following:

“7. The energy efficiency aid shall leverage additional investment from independent private investors as defined in Article 2 point (72) 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 such 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.”;

(d) in paragraph 8, point (f) is replaced by the following:

“(f) The energy efficiency fund or financial intermediary shall be established in accordance with the applicable laws and the Member State shall ensure a due diligence process in order to verify that commercially sound investment strategy will be applied for the purpose of implementing the energy efficiency aid measure.”;

(e) paragraph 10 is replaced by the following:

“10. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force.”;

(f) The following paragraphs 11, 12, 13 and 14 are inserted:

“11. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force. Where the relevant Union standards are minimum energy performance standards, the aid must be granted before the standards become mandatory for the undertaking concerned. In that case, the Member State must ensure that beneficiaries provide a precise renovation plan and timetable demonstrating that the aided renovation is at least sufficient to ensure compliance with the minimum energy performance standards. Where the relevant Union standards are different from minimum energy performance standards, the investment must be implemented and finalised at least 18 months before the standard enters into force.

12. Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building.

13. Aid for the installation of energy equipment fired by fossil fuels, including natural gas, shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

14. The Member State may assign the implementation of the aid measure to an entrusted entity.”;

(37) Article 40 is deleted;

(38) Article 41 is amended as follows:

(a) the title and paragraph 1 are replaced by the following:

“Article 41

Investment aid for the promotion of energy from renewable sources, of renewable hydrogen and of high-efficiency cogeneration

1. Investment aid for the promotion of energy from renewable energy sources, of renewable hydrogen and of high-efficiency cogeneration, with the exception of electricity produced from renewable hydrogen, 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.”;

(b) the following paragraph 1a is inserted:

“1a. Investment aid for electricity storage projects under this Article shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that it is granted to combined renewable and storage projects (behind-the-meter), where both elements are components of a single investment or where storage is connected to an existing renewable generation installation. The storage component shall absorb at least 75 % of its energy from directly connected renewable energy generation installation, on an annual basis. All investment components (generation and storage) are considered to constitute a single integrated project for verification of compliance with the thresholds set out in Article 4. The same rules shall apply to thermal storage directly connected to a renewable energy production installation.”;

(c) paragraphs 2, 3 and 4 are replaced by the following:

“2. Investment aid for the production and storage of biofuels, bioliquids, biogas (including biomethane) and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Annex IX to that Directive. The storage component shall obtain at least 75 % of its fuel content from directly connected biofuels, bioliquids, biogas (including biomethane) and biomass fuels production installations, on an annual basis. All investment components (production and storage) are considered to constitute a single integrated project for verification of compliance with the thresholds set out in Article 4.

3. Investment aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable hydrogen. For renewable hydrogen projects consisting of an electrolyser and one or more renewable generation units behind a single grid connection point, the capacity of the electrolyser shall not exceed the combined capacity of the renewable generation units. The investment aid may cover dedicated infrastructure for the transmission or distribution of renewable hydrogen, as well as storage facilities for renewable hydrogen.

4. Investment aid for high-efficiency cogeneration units shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that they provide overall primary energy savings compared to separate production of heat and electricity as provided for by Directive 2012/27/EU or any subsequent legislation replacing this act in full or in part. Investment aid for electricity and thermal storage projects directly connected to high-efficiency cogeneration based on renewable energy sources shall be exempted from the notification requirement of Article 108(3) of the Treaty under the conditions laid down in paragraph 1a.”;

(d) the following paragraph 4a is inserted:

“4a. Investment aid for high-efficiency cogeneration shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it is not for fossil fuel fired cogeneration

installations, with the exception of natural gas where compliance with the 2030 and 2050 climate targets is ensured in line with section 4.30 of Annex 1 to Commission Delegated Regulation (EU) 2022/1214.

* Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ L 188, 15.7.2022, p. 1).”;

(e) paragraphs 5, 6 and 7 are replaced by the following:

“5. The investment aid shall be granted in respect of newly installed or refurbished capacities. The aid amount shall be independent from the output.

6. The eligible costs shall be the total investment cost.

7. The aid intensity shall not exceed:

(a) 45 % of the eligible costs for investments in the production of renewable energy sources, including heat pumps compliant with Annex VII of Directive 2018/2001, renewable hydrogen and high-efficiency cogeneration based on renewable energy sources;

(b) 30 % of the eligible costs for any other investment covered by this Article.”;

(f) paragraph 9 is deleted;

(g) paragraph 10 is replaced by the following:

“10. The aid intensity may reach 100 % of the eligible costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;

(b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be excluded;

(d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid per unit of energy capacity from renewable sources or high efficiency-cogeneration.”;

(39) Article 42 is amended as follows:

(a) paragraphs 1 to 7 are replaced by the following:

“1. Operating aid for the promotion of electricity from renewable energy sources, with the exception of electricity produced from renewable hydrogen, 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, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

- (a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;
- (b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;
- (c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be excluded;
- (d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid per unit of electricity output or capacity from renewable sources.

The bidding process 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) a measure aims specifically to support demonstration projects;
- (b) a measure aims to address not only decarbonisation but also air quality or other pollution;
- (c) a Member State identifies reasons to expect that eligible sectors or innovative technologies have the potential to make an important and cost-effective contribution to environmental protection and deep decarbonisation in the longer term;
- (d) a measure is required to achieve diversification necessary to avoid exacerbating issues related to network stability;
- (e) a more selective approach can be expected to lead to lower costs of achieving environmental protection (for example through reduced system integration costs as a result of diversification, including between renewables, which could also include demand response and/or storage), and/or result in less distortion of competition.

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. Where the bidding process is limited to one or more innovative technologies, the aid granted to these technologies shall not exceed 5 % of the planned new electricity capacity from renewable energy sources per year in total.

5. Aid shall be granted as a premium in addition to the market price or in the form of a contract for difference whereby the generators sell their electricity directly in the market.

6. Aid beneficiaries shall sell their electricity directly in the market and be subject to standard balancing responsibilities. Beneficiaries may outsource balancing responsibilities to other undertakings on their behalf, such as aggregators. Furthermore, aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative.

7. Small-scale renewable electricity installations may benefit from aid in the form of direct price support that covers the full costs of operation and from an exemption from the requirement to sell the electricity produced on the market, in line with Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale for the purposes of this paragraph if their capacity is below the applicable threshold under Article 5(2)(b) or Article 5(4) of Regulation (EU) 2019/943.”;

(b) paragraphs 8, 9 and 10 are deleted;

(c) paragraph 11 is replaced by the following:

“11. Aid shall only be granted over the lifetime of the project.”;

(40) Article 43 is amended as follows:

(a) the heading and paragraphs 1 and 2 are replaced by the following:

“Article 43

Operating aid for the promotion of energy from renewable sources and of renewable hydrogen in small projects and renewable energy communities

1. Operating aid for the promotion of energy from renewable sources and of renewable hydrogen in small projects and renewable energy communities, with the exception of electricity produced from renewable hydrogen, 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. For the purposes of this Article small projects are defined as follows:

- (i) for electricity generation or storage – projects below or equal to 1 MW of installed capacity;
- (ii) for electricity consumption – projects with a maximum demand below or equal to 1 MW;
- (iii) for heat generation and gas production technologies – projects below or equal to 1 MW of installed capacity or equivalent;
- (iv) for the production of renewable hydrogen – projects below or equal to 3 MW of installed capacity or equivalent;

- (v) for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels – projects below or equal to an installed capacity of 50,000 tonnes/year;
- (vi) for 100 % SME-owned projects and demonstration projects – projects below or equal to 6 MW installed capacity or maximum demand;
- (vii) for projects 100 % owned by micro or small enterprises for wind generation only – projects below or equal to 18 MW of installed capacity.”;

(b) the following paragraphs 2a and 2b are inserted:

“2a. Aid to renewable energy communities shall be exempted from the notification requirement of Article 108(3) of the Treaty only for projects with an installed capacity or maximum demand below or equal to 6 MW from all renewable sources except for wind energy only, for which aid shall be granted to installations with an installed capacity below or equal to 18 MW.

2b. Operating aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable hydrogen.”;

(c) paragraph 3 is replaced by the following:

“3. Operating aid for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Annex IX to that Directive.”

(d) paragraph 4 is deleted;

(e) paragraph 5, 6 and 7 are replaced by the following:

“5. Aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the net extra cost (‘funding gap’) necessary to meet the objective of the aid measure, compared to the counterfactual scenario in the absence of aid. A detailed assessment of the net extra cost is not required if the aid amounts are determined through a competitive bidding process, because the latter provides a reliable estimate of the minimum aid required by potential beneficiaries.

6. Aid shall only be granted over the lifetime of the project.

7. Aid shall be granted as a premium in addition to the market price or in the form of a contract for difference whereby the generators sell their electricity directly in the market.”;

(f) the following paragraphs 8 and 9 are inserted:

“8. Aid beneficiaries shall be subject to standard balancing responsibilities. Beneficiaries may outsource balancing responsibilities to other undertakings on their behalf, such as aggregators. Furthermore, aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative.

9. Small-scale renewable electricity installations and demonstration projects may benefit from aid in the form of direct price support that covers the full costs of operation and from an exemption from the requirement to sell the electricity produced on the market, in line with

Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale for the purposes of this paragraph if their capacity is below the applicable threshold under Article 5(2)(b) or Article 5(4) of Regulation (EU) 2019/943.”;

(41) Article 44 is replaced by the following:

“Article 44

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

1. Aid schemes in the form of reductions in taxes fulfilling the conditions of Council Directive 2003/96/EC 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.

3. The beneficiaries of the tax reduction shall pay at least the minimum level of taxation laid down in Annex I to Council Directive 2003/96/EC, except for reductions:

- (a) granted on the basis of Article 15(1)(a) of Council Directive 2003/96/EC, for taxable products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources;
- (b) granted on the basis of the first, second, fourth and fifth indent of Article 15(1)(b) of Council Directive 2003/96/EC, for electricity (i) of solar, wind, wave, tidal or geothermal origin, (ii) of hydraulic origin produced in hydroelectric installations, (iii) generated from methane emitted by abandoned coalmines, and (iv) generated from fuel cells;
- (c) granted on the basis of the third indent of Article 15(1)(b) of Council Directive 2003/96/EC, for electricity generated from biomass or from products produced from biomass, to the extent that biomass is compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts;
- (d) granted on the basis of Article 15(1)(d) of Council Directive 2003/96/EC, for electricity produced from combined heat and power generation, provided that cogeneration by the combined generators is high-efficiency cogeneration as defined in Article 2(34) of Directive 2012/27/EU;
- (e) granted on the basis of Article 15(1)(l) of Council Directive 2003/96/EC, for products falling within CN code 2705 used for heating purposes;
- (f) granted on the basis of Article 16(1) of Council Directive 2003/96/EC.

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

5. Tax reductions granted on the basis of Article 16(1) of Council Directive 2003/96/EC shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts, and are made from the feedstock listed in Annex IX to that Directive.”;

(42) the following Article 44a is inserted:

“Article 44a

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

1. Aid schemes in the form of reductions in environmental taxes or parafiscal levies shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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. This Article shall not apply to reductions in taxes or levies on energy products and electricity, defined in Article 2 of Council Directive 2003/96/EC.

2. Aid in the form of reductions in environmental taxes or parafiscal levies shall be compatible only where the reduction allows to achieve a higher level of environmental protection by including in the scope of the environmental tax or levy undertakings that would not be able to pursue their economic activities without the reduction.

3. Only those undertakings that would not be able to pursue their economic activities without the reduction are eligible for aid. For the purposes of this Article, this is considered the case for undertakings whose production costs would substantially increase due to the environmental tax or parafiscal levy without the reduction and which are not able to pass that increase on to customers. The increase in the production costs shall be calculated as a proportion of the gross value added for each sector or category of beneficiaries.

4. The beneficiaries shall be selected on the basis of transparent, non-discriminatory and objective criteria. The aid shall be granted in the same way to all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the objectives of the aid measure.

5. The gross grant equivalent of the aid shall not exceed 80 % of the nominal rate of the tax or levy.

6. Aid schemes in the form of reductions in environmental taxes or parafiscal levies may be based on a reduction of the applicable tax rate or on the payment of a fixed compensation amount or on a combination of these mechanisms.”;

(43) Articles 45 and 46 are replaced by the following:

“Article 45

Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation

1. Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of

nature-based solutions for climate change adaptation and mitigation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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 under this Article may be granted for the following activities :

- (a) the remediation of environmental damage, including damage to the quality of the soil, surface water or groundwater or to the marine environment;
- (b) the rehabilitation of natural habitats and ecosystems from a degraded state;
- (c) the protection or restoration of biodiversity or of ecosystems to contribute to achieving the good condition of ecosystems or to protect ecosystems that are already in good condition;
- (d) the implementation of nature-based solutions for climate change adaptation and mitigation.

3. This Article shall not apply to aid to make good the damage caused by natural disasters, such as earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.

4. This Article shall also not apply to aid for remediation or rehabilitation following the closure of power plants and mining or extraction operations.

5. Without prejudice to Directive 2004/35/EC of the European Parliament and of the Council* or other relevant Union rules on liability for environmental damage, where the entity or undertaking liable for the environmental damage under the law applicable in each Member State is identified, that entity or undertaking shall finance the works necessary to prevent and correct environmental degradation and contamination in accordance with the 'polluter pays' principle, and no aid shall be granted for the works that the entity or undertaking would be legally required to conduct. The Member State shall take all necessary measures, including legal action, to identify the liable entity or undertaking at the origin of the environmental damage and make it bear the relevant costs. Where the entity or undertaking liable under the applicable law cannot be identified or made to bear the costs of remediating the environmental damage it has caused, in particular because the liable undertaking has ceased to legally exist and no other undertaking can be regarded as its legal or economic successor, or where there is insufficient financial security to meet the costs of remediation, aid may be granted to support the remediation or rehabilitation works. Aid shall not be granted for the implementation of compensatory measures referred to in Article 6(4) of Council Directive 92/43/EEC**. Aid may be granted under this Article to cover the extra costs necessary to increase the scope or ambition of those measures, beyond the legal obligations under Article 6(4) of Directive 92/43/EEC.

6. For investments in the remediation of environmental damage or the rehabilitation of natural habitats and ecosystems, the eligible costs shall be the costs incurred for the remediation or rehabilitation works, less the increase in the value of the land or property.

7. Evaluations of the increase in the value of the land or property resulting from remediation or rehabilitation shall be carried out by an independent qualified expert.

8. For investments in the protection or restoration of biodiversity and in the implementation of nature-based solutions for climate change adaptation and mitigation, the eligible costs shall be

the total costs of the works resulting in the contribution to protecting or restoring biodiversity or in the implementation of nature-based solutions for climate change adaptation and mitigation.

9. The aid intensity shall not exceed:

- (a) 100 % of the eligible costs for investments in the remediation of environmental damage or the rehabilitation of natural habitats and ecosystems;
- (b) 70 % of the eligible costs for investments in the protection or restoration of biodiversity and in nature-based solutions for climate change adaptation and mitigation.

10. The aid intensity for investments in the protection or restoration of biodiversity and in the implementation of nature-based solutions for climate change adaptation and mitigation 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.

Article 46

Investment aid for energy efficient district heating and/or cooling

1. Investment aid for the construction, extension or upgrade of energy efficient district heating and/or cooling systems, which includes the construction, extension or the upgrade of heating or cooling generation installations and/or thermal storage solutions and/or the distribution network, 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 for the construction, extension or upgrade of district heating and/or cooling systems that are or are to become energy efficient as defined in Article 2, point (41), of Directive 2012/27/EU. Where the system does not yet become fully energy efficient as a result of the supported works on the distribution network, the additional upgrades required to fulfil the conditions for falling under the definition of energy efficient district heating and/or cooling shall, for heating and/or cooling generation facilities which are subject to the aid, commence within three years from the start of the supported works on the distribution network.

3. Aid may be granted for energy generation based on renewable sources, including heat pumps compliant with Annex VII of Directive 2018/2001, waste heat or high-efficient cogeneration, as well as thermal storage solutions. Aid for energy generation based on waste may be based either on waste that meets the definition of renewable energy sources or waste used to fuel installations that meet the definition of high-efficiency cogeneration. Waste used as input fuel must not circumvent the waste hierarchy principle as defined in Article 4, point (1), of Directive 2008/98/EC.

4. Aid shall not be granted for the construction or upgrade of fossil fuel based generation facilities, except for natural gas. Aid for the construction or upgrade of natural gas based generation facilities may be granted only where compliance with the 2030 and 2050 climate targets is ensured in line with Annex 1, section 4.30 of Delegated Regulation (EU) 2022/1214.

5. Aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels may only be granted where all of the following conditions are met:

- (a) the distribution network is or becomes suitable for the transmission of heating or cooling generated from renewable energy sources and/or waste heat;
- (b) the upgrade does not result in an increased generation of energy from fossil fuels except for natural gas. In case of an upgrade to the storage or network distributing heating and cooling generated from natural gas, in as far as the upgrade results in an increased generation of energy from natural gas, those generation facilities need to be in compliance with the 2030 and 2050 climate targets, in line with Annex 1, section 4.31 of Delegated Regulation (EU) 2022/1214.

6. The eligible costs shall be the investment costs related to the construction or upgrade of an energy efficient district heating and/or cooling system.

7. The aid intensity shall not exceed 30 % 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.

8. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, waste heat, or a combination of the two, including renewable cogeneration.

9. As an alternative to paragraph 3, the aid intensity may reach up to 100 % of the funding gap. The aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the funding gap as defined under point (118). A detailed assessment of the net extra cost is not required if the aid amounts are determined through a competitive bidding process, because the latter provides a reliable estimate of the minimum aid required by potential beneficiaries.

* 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 (OJ L 143, 30.4.2004, p. 56).

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

(44) Article 47 is amended as follows:

- (a) the title and paragraphs 1 to 8 are replaced by the following:

“Article 47

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

1. Investment aid for resource efficiency and circularity shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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 for the following types of investments:

- (a) investments improving resource efficiency through one or both of the following:

- (i) a net reduction in the resources consumed in the production of a given quantity of output compared to a pre-existing production process used by the beneficiary or to alternative projects or activities listed under paragraph 7. The resources consumed shall include all material resources consumed, with the exception of energy, and the reduction shall be determined by measuring or estimating consumption before and after the implementation of the aid measure, taking into account any adjustment for external conditions that may affect resource consumption;
 - (ii) the replacement of primary raw materials or feedstock with secondary (re-used or recovered, including recycled) raw materials or feedstock;
- (b) investments for the prevention and reduction of waste generation, preparing for re-use, decontaminating and recycling of waste generated by the beneficiary or investments for the preparing for re-use, decontaminating and recycling of waste generated by third parties and which would otherwise be unused, disposed of, or be treated based on a treatment operation that is situated lower in the priority order of the waste hierarchy referred to in Article 4, point (1) of Directive 2008/98/EC or in a less resource-efficient manner, or would lead to a lower quality of recycling output;
- (c) investments for the collection, sorting, decontamination, pre-treatment and treatment of other products, materials or substances generated by the beneficiary or by third parties and which would otherwise be unused or used in a less resource-efficient manner;
- (d) investments for the separate collection and sorting of waste with a view to its preparing for re-use or recycling.

3. Aid for waste disposal and waste recovery operations to generate energy shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

4. The aid shall not relieve undertakings that generate waste from any costs or obligations relating to the treatment of waste for which they are liable under Union or national law, including under extended producer responsibility schemes, or from costs that should be considered as normal costs for an undertaking.

5. The aid must not incentivise the generation of waste or the increased use of resources.

6. Investments related to technologies constituting an already profitable established commercial practice throughout the Union shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

7. The eligible costs shall be the extra investment costs determined by comparing the total investment costs of the project with those of a less environmentally-friendly project or activity that shall be one of the following:

- (a) a counterfactual scenario consisting in a comparable investment that would credibly be realised in a new or pre-existing production process without aid and which does not achieve the same level of resource efficiency;
- (b) a counterfactual scenario consisting in treating the waste based on a treatment operation that is situated lower in the priority order of the waste hierarchy referred to

in Article 4, point (1) of Directive 2008/98/EC or treating the waste, other products, materials or substances in a less resource-efficient way;

- (c) a counterfactual scenario consisting in a comparable investment in a conventional production process using primary raw material, or feedstock, if the obtained secondary (re-used or recovered) product is technically and economically substitutable with the primary product.

In all situations listed under points (a) and (c), the counterfactual scenario shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual scenario shall be credible in the light of legal requirements, market conditions and incentives.

Where the investment consists in installing an add-on component to an already existing facility, for which there is no less environmentally-friendly equivalent, or where the aid applicant can demonstrate that no investment would take place in the absence of aid, the eligible costs shall be the total investment costs.

8. The aid intensity shall not exceed 40 % 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.”;

- (b) paragraph 10 is replaced by the following:

“10. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalised at least 18 months before the standard enters into force.”;

- (45) Articles 48 and 49 are replaced by the following:

“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 for energy infrastructure that is partly or fully exempted from third party access or tariff regulation in accordance with internal energy market legislation shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

3. Aid for investments in electricity and gas storage projects shall not be exempt from the notification requirement under this Article.

4. Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty where the infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases, or used for the transport of more than 50% hydrogen and renewable gases.

5. The eligible costs shall be the total investment costs.

6. The aid intensity may reach up to 100 % of the funding gap. The aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the funding gap as defined under point (118). A detailed assessment of the net extra cost is not required if the aid amounts are determined through a competitive bidding process, because it provides a reliable estimate of the minimum aid required by potential beneficiaries.

Article 49

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

1. Aid for studies or consultancy services, including energy audits, directly linked to investments eligible for aid under this Section shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and 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 the entire study or consultancy service concerns investments eligible for aid under this Section, the eligible costs shall be the costs of the study or consultancy service. Where only part of the study or consultancy service concerns investments eligible for aid under this Section, the eligible costs shall be the costs of the part of the study or consultancy service relating to those investments.

2a. Aid shall be granted irrespective of whether the findings of the study or the consultancy service are followed by an investment eligible for aid under this Section.

3. The aid intensity shall not exceed 60 % of the eligible costs.

4. The aid intensity may be increased by 20 percentage points for studies or consultancy services undertaken on behalf of small undertakings and by 10 percentage points for studies or consultancy services undertaken on behalf of medium-sized undertakings.

5. Aid shall not be granted for energy audits carried out to comply with Directive 2012/27/EU, unless the energy audit is carried out in addition to the mandatory energy audit under that Directive.”;

(46) Articles 52 and 52a are replaced by the following:

“Article 52

Aid for fixed broadband networks

1. Aid for fixed broadband network deployment 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 all costs for the construction, management and operation of a fixed broadband network. The maximum aid amount for a project shall be established on the basis of a competitive selection process as set out in paragraph 6, point (a). Where an investment is carried out in accordance with paragraph 6, point (b), without a competitive selection process, the aid amount shall not exceed the difference between the eligible costs and the normal

operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante on the basis of reasonable projections and verified ex post through a claw-back mechanism. The reasonable projection of the measure requires that all costs and all revenues, which are expected to be incurred over the economic lifetime of the investment, shall be taken into account.

3. The following alternative types of investment are eligible:

- (a) fixed broadband network deployment to connect households and socioeconomic drivers in areas where there is no network providing a speed of at least 100 Mbps download under peak-time conditions (threshold speed) existing or credibly planned to be deployed within the relevant time horizon. This shall be verified by mapping and public consultation in accordance with paragraph 4;
- (b) fixed broadband network deployment to connect socio-economic drivers in areas where there is only one network providing a speed of at least 100 Mbps download under peak time conditions but below 300 Mbps download under peak-time conditions (threshold speed) existing or credibly planned to be deployed within the relevant time horizon. This shall be verified by mapping and public consultation in accordance with paragraph 4.

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

5. The mapping and public consultation for the purposes of paragraph 3 shall meet the following requirements cumulatively:

- (a) the mapping shall identify the geographic target areas planned to be covered under the State intervention and shall take into account all existing fixed broadband networks. The mapping shall be performed:
 - (i) for fixed wired networks, at address level on the basis of premises passed;
 - (ii) for fixed wireless access networks, at address level on the basis of premises passed or on the basis of maximum 100x100 metre grids.

Where a network deployment includes, at the same time, the deployment of an access network and a limited deployment of the necessary ancillary backhaul network to enable the functioning of the access network, a mapping of backhaul networks is not required.

All the elements of the methodology and the underlying technical criteria used to map the target areas must be made publicly available. Mapping shall always be verified through a public consultation;

- (b) the public consultation shall be carried out by the competent public authority through the publication of the main characteristics of the planned State intervention and the list of geographic target areas identified in the mapping exercise in accordance with point

(a). That information must be made available on a publicly accessible website at regional and national level. The public consultation shall invite interested parties to comment on the planned State intervention and to submit substantiated information in accordance with point (a) regarding their networks providing the threshold speeds set out in paragraph 3 existing or credibly planned to be deployed in the target area within the relevant time horizon. The public consultation shall last at least 30 days.

6. The intervention shall bring a significant improvement (step change) compared to the networks existing or credibly planned to be deployed within the relevant time horizon, as identified through the mapping and public consultation carried out in accordance with paragraph 5. Credibly planned networks shall be taken into account for the assessment of the step-change only if they would, on their own, provide similar performance to that of the planned State funded network in the target areas within the relevant time horizon. A step change takes place if, as a result of the subsidised intervention, a significant new investment in the broadband network is undertaken and the subsidised network brings significant new capabilities to the market in terms of broadband service availability, capacity, speeds and competition compared to the existing or credibly planned networks within the relevant time horizon. The intervention shall include more than 70% investments in broadband infrastructure. In any case, an eligible intervention, as laid down in paragraph 3, must result at least in the following improvements:

- (a) for interventions under paragraph 3, point (a), the State funded network shall at least triple the download speed compared to the existing networks (target speed);
- (b) for interventions under paragraph 3, point (b), the State funded network shall at least triple the download speed compared to the existing networks and shall provide a speed of at least 1 Gbps download under peak-time conditions (target speed).

7. The aid shall be granted as follows:

- (a) the aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection procedure in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer;
- (b) when the aid is granted without a competitive selection procedure to a public authority to deploy and manage, directly or through an in-house entity, a fixed broadband network, the public authority or the in-house entity, as the case may be, shall provide only wholesale services using the subsidised network. Any concession or other entrustment to a third party to build or operate the network shall be allocated through an open, transparent and non-discriminatory competitive selection procedure, in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer.

8. The subsidised network shall offer wholesale access, in accordance with Article 2, point (139), under fair and non-discriminatory conditions. By derogation, interventions eligible under paragraph (3), point (a) may offer virtual unbundling instead of physical unbundling if the virtual unbundling access product is approved in advance by the national regulatory authority or other competent authority. Active wholesale access shall be granted for at least ten years from the start of the operation of the network and the wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. Access based on virtual unbundling must be granted for a period of time equal to the lifespan of the infrastructure for which virtual unbundling is a substitute. The same access conditions shall apply to the entirety of the network, including on parts of the network where existing infrastructures have

been used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the network. The network shall provide access to at least three access seekers and shall make available at least 50% of the capacity to access seekers. In order to render the wholesale access effective and to enable the access seekers to provide services, wholesale access shall also be granted to parts of the network that have not been State funded or that may not have been deployed by the aid beneficiary, such as by granting access to active equipment even if only broadband infrastructure is financed.

9. The wholesale access price shall be based on one of the following benchmarks and pricing principles:

- (a) the average published wholesale prices that prevail in other comparable and more competitive areas of the Member State;
- (b) the regulated prices already set or approved by the national regulatory authority for the markets and services concerned; or
- (c) cost orientation or a methodology mandated in accordance with the sectorial regulatory framework.

Without prejudice to the competences of the national regulatory authority under the regulatory framework, the national regulatory authority shall be consulted on wholesale access products, the terms and conditions for access, including on prices, and on disputes related to the application of this Article.

10. 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.

11. To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, the aid beneficiary shall ensure accounting separation between the funds used for the deployment and the operation of the State funded network and other funds at its disposal.

Article 52a

Aid for 4G and 5G mobile networks

1. Aid for 4G and 5G mobile network deployment 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 all costs for the construction, management and operation of passive and active components of a mobile network. The maximum aid amount for a project shall be established on the basis of a competitive selection process as set out in paragraph 7, point (a). Where an investment is carried out in accordance with paragraph 7, point (b), without a competitive selection process, the aid amount shall not exceed the difference between the eligible costs and the normal operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante on the basis of reasonable projections and verified ex post through a claw-back mechanism. The reasonable projection of the measure requires that all costs and all revenues, which are expected to be incurred over the economic lifetime of the investment, shall be taken into account.

3. Mobile 5G network deployment shall be located in areas where there are no 4G and no 5G mobile networks existing or credibly planned to be deployed within the relevant time horizon. Mobile 4G network deployment shall be located in areas where there are no 3G, 4G or 5G mobile networks existing or credibly planned to be deployed within the relevant time horizon. These requirements shall be verified by mapping and public consultation in accordance with paragraph 4.

4. The mapping and public consultation for the purposes of paragraph 3 shall meet the following requirements cumulatively:

- (a) the mapping shall clearly identify the geographic target areas planned to be covered under the State intervention and shall take into account all existing mobile networks. Mapping shall be performed on the basis of maximum 100x100 metre grids. All the elements of the methodology and the underlying technical criteria used to map the target areas must be made publicly available. Mapping shall always be verified through a public consultation;

Where a network deployment includes, at the same time, the deployment of an access network and a limited deployment of the necessary ancillary backhaul network to enable the functioning of the access network, a separate mapping of backhaul networks is not required;

- (b) the public consultation shall be carried out by the competent public authority through the publication of the main characteristics of the planned State intervention and the list of geographic target areas identified in the mapping exercise in accordance with point (a). That information must be made available on a publicly accessible website at regional and national level. The public consultation shall invite interested parties to comment on the planned State intervention and to submit substantiated information in accordance with point (a) regarding their mobile networks with the characteristics set out in paragraph 3 that are existing or credibly planned to be deployed in the target area within the relevant time horizon. The public consultation shall last at least 30 days.

5. The aided infrastructure shall not be taken into account to meet the coverage obligations of the mobile networks operators that arise out of conditions attached to rights of use of 4G and 5G spectrum.

6. The intervention shall bring a significant improvement (step change) compared to the mobile networks existing or credibly planned to be deployed within the relevant time horizon, as identified through mapping and public consultation carried out in accordance with paragraph 4. Credibly planned networks shall be taken into account for the assessment of the step-change only if they would, on their own, provide similar performance to that of the planned State funded network in the target areas within the relevant time horizon. A step change takes place if, as a result of the subsidised intervention, a significant new investment in the mobile network is undertaken and the subsidised network brings significant new capabilities to the market in terms of mobile service availability, capacity, speeds and competition compared to the existing or credibly planned networks within the relevant time horizon. The intervention shall include more than 50% investment in broadband infrastructure.

7. The aid shall be granted as follows:

- (a) the aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection procedure in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer;
- (b) when the aid is granted without a competitive selection procedure to a public authority to deploy and manage, directly or through an in-house entity, a mobile network, the public authority or the in-house entity, as the case may be, shall provide only wholesale services using the subsidised network. Any concession or other entrustment to a third party to build or operate the network shall be allocated through an open, transparent and non-discriminatory competitive selection process, in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer.

8. The operation of the subsidised network shall offer wholesale access, in accordance with Article 2, point (139), under fair and non-discriminatory conditions. Active wholesale access shall be granted for at least ten years from the start of the operation of the network and wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. The same access conditions shall apply on the entirety of the network, including on the parts of such network where existing infrastructures have been used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the network. In order to render the wholesale access effective and to enable the access seekers to provide services, wholesale access shall also be granted to parts of the network that have not been State funded or that may not have been deployed by the aid beneficiary, such as by granting access to active equipment even if only broadband infrastructure is financed.

9. The wholesale access price shall be based on one of the following benchmarks and pricing principles:

- (a) the average published wholesale prices that prevail in other comparable and more competitive areas of the Member State;
- (b) the regulated prices already set or approved by the national regulatory authority for the markets and services concerned; or
- (c) cost orientation or a methodology mandated in accordance with the sectorial regulatory framework.

Without prejudice to the competences of the national regulatory authority under the regulatory framework, the national regulatory authority shall be consulted on the wholesale access products, the terms and conditions for access, including on prices, and on disputes related to the application of this Article.

10. 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.

11. The use of the State funded mobile 4G or 5G network to provide fixed wireless access services shall only be allowed in areas where there is no network providing speeds of at least 100 Mbps download under peak-time conditions existing or credibly planned to be deployed within the relevant time horizon, if the following cumulative conditions are met:

- (a) the mapping and public consultation exercise takes also into account the fixed broadband networks existing or credibly planned determined according to Article 52(4);
- (b) the supported 4G or 5G fixed wireless access network shall at least triple the download speed compared to the existing or credibly planned networks (target speed) according to Article 52(5).

12. To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, the aid beneficiary shall ensure accounting separation between the funds used for the deployment and the operation of the State funded network and other funds at its disposal.”;

(47) Article 52c is replaced by the following:

“Article 52c

Connectivity vouchers

1. Aid in the form of a connectivity voucher scheme for consumers, to facilitate teleworking, online education, training services, or for SMEs 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 duration of a voucher scheme shall not exceed 3 years. The validity of the vouchers for end users cannot exceed 2 years.

3. The following categories of vouchers shall be eligible:

- (a) vouchers available to consumers and SMEs for subscribing to a new broadband service or upgrading the existing subscription to a service providing speeds of at least 30 Mbps download under peak-time conditions, provided that all providers of electronic communications services providing speeds of at least 30 Mbps download under peak-time conditions are eligible under the scheme. Vouchers shall not be awarded for switching providers providing the same speeds as the speeds already available under the existing subscription or for upgrades of an existing subscription of at least 30 Mbps download under peak-time conditions;
- (b) vouchers available to SMEs for subscribing to a new broadband service or upgrading the existing subscription to a service providing speeds of at least 100 Mbps download under peak-time conditions, provided that all providers of electronic communications services providing speeds of at least 100 Mbps download under peak-time conditions are eligible under the scheme. Vouchers shall not be awarded for switching providers providing the same speeds as the speeds already available under the existing subscription or for upgrades of an existing subscription of at least 100 Mbps download under peak-time conditions.

4. The vouchers shall cover up to 50 % of the eligible costs. Eligible costs are the monthly fee, the standard set-up costs and the necessary terminal equipment for the end users to use the broadband services with the speeds specified in paragraph 3. The costs for in-house wiring and limited deployment in the end users’ private properties or in the public property in close proximity to the end users’ private properties are also eligible to the extent they are necessary

and ancillary to the provision of the service. The voucher shall be paid by the public authorities directly to the end-users or directly to the service provider chosen by the end users.

5. Vouchers shall not be provided for areas where there is no network providing the eligible services specified in paragraph 3. Member States must carry out a public consultation through publication of the main characteristics of the scheme and of the list of geographic target areas on a publicly accessible website at regional and national level. The public consultation shall invite interested parties to comment on the draft measure and to submit substantiated information regarding their existing networks able to reliably provide the speed specified in paragraph 3. The public consultation shall last at least 30 days.

6. Vouchers shall be technologically neutral. The schemes shall ensure equal treatment of all possible service providers and shall offer end users the widest possible choice of providers irrespective of the technologies used. For that purpose, the Member State shall set up an online registry of all eligible service providers or implement an equivalent alternative method to ensure the openness, transparency and non-discriminatory nature of the State intervention. End users shall have the possibility to consult this information about all undertakings that are able to provide eligible services. All undertakings capable of providing eligible services shall have the right, upon request, to be included in the online registry or in any alternative location chosen by the Member State.

7. In order to minimise market distortions, Member States shall carry out a market assessment identifying the eligible providers present in the area and collecting information to calculate their market share, the take-up of eligible services and their prices. Aid shall only be granted if the market assessment determines that the scheme is designed sufficiently broadly in order not to unduly benefit a limited number of providers and that the scheme does not lead to reinforcing the (local) market power of certain providers.

8. To be eligible, when a provider of broadband services is vertically integrated and has a retail market share above 25 %, it must offer, on the corresponding wholesale access market, wholesale access products on the basis of which any access seeker will be able to provide the eligible services at the speed specified in paragraph 3, under open, transparent and non-discriminatory conditions.

The wholesale access price shall be set on one of the following benchmarks and pricing principles:

- (a) the average published wholesale prices that prevail in other comparable and more competitive areas of the Member State;
- (b) the regulated prices already set or approved by the national regulatory authority for the markets and services concerned;
- (c) costs orientation or a methodology mandated in accordance with the sectoral regulatory framework.

Without prejudice to the competences of the national regulatory authority under the regulatory framework, the national regulatory authority shall be consulted on on wholesale access products, the terms and conditions for access, including on prices, and on disputes related to the application of this Article.”;

(48) The following Article 52d is inserted:

Aid for backhaul networks

1. Aid for backhaul network deployment 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 all costs for the construction, management and operation of a backhaul network. The maximum aid amount for a project shall be established on the basis of a competitive selection process as set out in paragraph 6, point (a). Where an investment is carried out in accordance with paragraph 6, point (b), without a competitive selection process, the aid amount shall not exceed the difference between the eligible costs and the normal operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante on the basis of reasonable projections and verified ex post through a claw-back mechanism. The reasonable projection of the measure requires that all costs and all revenues, which are expected to be incurred over the economic lifetime of the investment, shall be taken into account.

3. Backhaul network deployment shall be located in areas where there is no backhaul network based on fibre or on other technologies able to provide the same level of performance and reliability as fibre existing or credibly planned to be deployed within the relevant time horizon. This shall be verified by mapping and public consultation in accordance with paragraph 4.

4. The mapping and public consultation for the purposes of paragraph 3 shall meet the following requirements cumulatively:

- (a) the mapping shall identify the target areas for the backhaul State intervention and shall take into account all existing backhaul networks. All the elements of the methodology and the underlying technical criteria used to map the target areas must be made publicly available. Mapping shall always be verified through a public consultation;
- (b) the public consultation shall be carried out by the competent public authority through the publication of the main characteristics of the planned State intervention and the list of areas identified in the mapping exercise in accordance with point (a). That information must be made available on a publicly accessible website at regional and national level. The public consultation shall invite interested parties to comment on the planned State intervention and to submit substantiated information in accordance with point (a) regarding the backhaul networks existing or credibly planned to be deployed within the relevant time horizon. The public consultation shall last at least 30 days.

5. The intervention shall bring a significant improvement (step change) compared to the backhaul networks existing or credibly planned to be deployed within the relevant time horizon, as identified through mapping and public consultation carried out in accordance with paragraph 4. Credibly planned networks shall be taken into account for the assessment of the step-change only if they would, on their own, provide similar performance to that of the planned State funded network in the target areas within the relevant time horizon. A step change takes place if, as a result of the subsidised intervention, a significant new investment in the backhaul network is undertaken and the subsidised backhaul network is based on fibre or on other technologies able to provide the same level of performance of fibre, as opposed to the existing

or credibly planned networks within the relevant time horizon. The intervention must include more than 70% investment in broadband infrastructure.

6. The aid shall be granted as follows:

- (a) the aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection procedure in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer;
- (b) when the aid is granted without a competitive selection procedure to a public authority to deploy and manage, directly or through an in-house entity, a backhaul network, the public authority or the in-house entity, as the case may be, shall provide only wholesale services using the subsidised network. Any concession or other entrustment to a third party to build or operate the network shall be allocated through an open, transparent and non-discriminatory competitive selection procedure, in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer.

7. The operation of the subsidised network shall offer wholesale access, in accordance with Article 2, point (139), under fair and non-discriminatory conditions to both fixed and mobile networks. Active wholesale access shall be granted for at least ten years from the start of the operation of the network and the wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. The same access conditions shall apply to the entirety of the network, including on parts of the network where existing infrastructures have been used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the network. The State funded network shall cater for all fixed and mobile networks in the target areas of the backhaul intervention and shall make available at least 50% of the capacity to access seekers. In order to render the wholesale access effective and to enable the access seekers to provide services, wholesale access shall also be granted to parts of the network that have not been State funded or that may not have been deployed by the aid beneficiary, such as by granting access to active equipment even if only broadband infrastructure is financed.

8. The wholesale access price shall be based on one of the following benchmarks and pricing principles:

- (a) the average published wholesale prices that prevail in other comparable, more competitive areas of the Member State;
- (b) the regulated prices already set or approved by the national regulatory authority for the markets and services concerned; or
- (c) cost orientation or a methodology mandated in accordance with the sectorial regulatory framework.

Without prejudice to the competences of the national regulatory authority under the regulatory framework, the national regulatory authority shall be consulted on wholesale access products, the terms and conditions for access, including on prices, and on disputes related to the application of this Article.

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

10. To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, the aid beneficiary shall ensure accounting separation between the funds used for the deployment and the operation of the State funded network and other funds at its disposal.”;

(49) in Article 53, paragraph 8 is replaced by the following:

“8. For aid not exceeding EUR 2.2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 6 and 7.”;

(50) in Article 55, paragraph 12 is replaced by the following:

“12. For aid not exceeding EUR 2.2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 10 and 11.”;

(51) Article 56b is amended as follows:

(a) the following paragraph 1a is inserted:

“1a. Aid under this Article shall not be granted for the construction, installation, or upgrade of refuelling infrastructure supplying vessels with fossil-based fuels, such as diesel, natural gas, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG).”;

(b) the following paragraph 2a is inserted:

“2a. For aid for recharging and refuelling infrastructure supplying electricity, hydrogen, ammonia and methanol, the eligible costs shall be the costs of the construction, installation, upgrade or extension of recharging or refuelling infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself and related technical equipment, including fixed, mobile or floating facilities, the installation of, or upgrades to, electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, as well as civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.

The eligible costs may also cover the investment costs of on-site production of renewable electricity or renewable hydrogen and the investment costs of storage units for storing renewable electricity or hydrogen. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.”;

(c) paragraph 5 is replaced by the following:

“5. The aid intensity per investment referred to in point (a) of paragraph 2 shall not exceed:

- (a) 100 % of the eligible costs where total eligible costs of the project are up to EUR 22 million;
- (b) 80 % of the eligible costs where total eligible costs of the project are above EUR 22 million and up to EUR 55 million;

- (c) 60 % of the eligible costs where total eligible costs of the project are above EUR 55 million and up to the amount laid down in point (ee) of Article 4(1).

The aid intensity shall not exceed 100 % of the eligible costs determined in point (b) of paragraph 2 and point (c) of paragraph 2 up to the amount laid down in point (ee) of Article 4(1).”;

- (d) the following paragraph 8a is inserted:

“8a. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely renewable hydrogen. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying ammonia or methanol, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely ammonia or methanol the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.”;

- (e) paragraph 9 is replaced by the following:

“9. For aid not exceeding EUR 5.5 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4, 5 and 6.”;

- (52) Article 56c is amended as follows:

- (a) the following paragraph 1a is inserted:

“1a. Aid under this Article shall not be granted for the construction, installation, or upgrade of refuelling infrastructure supplying vessels with fossil-based fuels, such as diesel, natural gas, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG).”;

- (b) the following paragraph 2a is inserted:

“2a. For aid for recharging and refuelling infrastructure supplying electricity, hydrogen, ammonia and methanol, the eligible costs shall be the costs of the construction, installation, upgrade or extension of recharging or refuelling infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself and related technical equipment, including fixed, mobile or floating facilities, the installation of, or upgrades to, electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, as well as civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.

The eligible costs may also cover the investment costs of on-site production of renewable electricity or renewable hydrogen and the investment costs of storage units for storing renewable electricity or hydrogen. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.”;

(c) the following paragraph 7a is inserted:

“7a. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely renewable hydrogen. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying ammonia or methanol, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely ammonia or methanol the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.”;

(d) paragraph 8 is replaced by the following:

“8. For aid not exceeding EUR 2.2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4 and 5.”;

(53) in Article 56d, paragraph 4 is replaced by the following:

“4. The maximum thresholds laid down in Articles 56e and 56f shall apply to the total outstanding financing, in so far as that financing provided under any financial product supported by the InvestEU Fund contains aid. The maximum thresholds shall apply:

- (a) per project in the case of aid with identifiable eligible costs covered by Article 56e(2), (3) and (4), Article 56e(5), point (a)(i), Article 56e(6), (7), (8) and (9);
- (b) per final beneficiary in the case of aid without identifiable eligible costs covered by Article 56e(5), points (a)(ii), (iii) and (iv), Article 56e(10) and Article 56f.”;

(54) Article 56e is amended as follows:

(a) Paragraph 3 is replaced by the following:

“3. Aid for fixed broadband network deployment and aid for 4G and 5G mobile network deployment to connect certain eligible socioeconomic drivers shall comply with the following conditions:

- (a) aid shall only be granted to projects fulfilling all compatibility conditions laid down respectively in Article 52 and Article 52a unless indicated otherwise in points (c) and (d) of this paragraph;
- (b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 150 million;
- (c) the project connects socioeconomic drivers that are public administrations or public or private entities entrusted with the operation of services of general interest or of services of general economic interest within the meaning of Article 106(2) of the Treaty. Projects including elements or entities other than those specified under this point are excluded;
- (d) by way of derogation from Article 52(4), the identified market failure must be verified either by available appropriate mapping or, when such mapping is not available, by a public consultation, as follows:

- (i) the mapping can be considered appropriate if it is not older than 18 months. The mapping shall clearly identify the socio economic drivers envisaged to be covered under the public intervention and shall include all networks providing, under peak time conditions, speeds of at least 100 Mbps download but below 300 Mbps download (threshold speeds) existing or credibly planned to be deployed in the relevant time horizon that pass the premises of the identified eligible socioeconomic driver as referred to in point (c). The mapping shall be carried out by the competent public authority. The mapping shall be performed (1) for purely fixed networks at address level on the basis of premises passed; (2) for fixed wireless access networks at address level on the basis of premises passed or on the basis of maximum 100x100 metre grids; (3) for mobile networks on the basis of maximum 100x100 metre grids. All the elements of the methodology and the underlying technical criteria used to map the target areas must be made publicly available. To foster synergies and simplification for the public administration, a geographical survey under Article 22 of Directive (EU) 2018/1972 may be considered to constitute an appropriate mapping in the meaning of this point, provided that the conditions laid down in this point are met;
- (ii) the public consultation shall be carried out by the competent public authority through the publication on a publicly accessible website at regional and national level of the main characteristics of the planned State intervention. The public consultation shall invite interested parties to comment on the planned State intervention and to submit substantiated information regarding networks providing, under peak time conditions, speeds of at least 100 Mbps download but below 300 Mbps download (threshold speeds) existing or credibly planned to be deployed in the relevant time horizon and that pass the premises of an eligible socioeconomic driver as referred to in point (c) and identified in accordance with point (i), based on information: (1) for purely fixed networks, at address level on the basis of premises passed; (2) for fixed wireless access networks, at address level on the basis of premises passed or on the basis of maximum 100x100 metre grids; (3) for mobile networks on the basis of maximum 100x100 metre grids. The public consultation shall last at least 30 days.”;

(b) in paragraph 4, points (a) and (b) are replaced by the following:

“(a) Aid shall be granted only for investments in energy infrastructure which are not exempted from third party access, tariff regulation and unbundling, based on the internal energy market legislation, for the following categories of projects:

- (i) As regards gas infrastructure, projects included in the prevailing Union list of Projects of Common Interest in Annex VII to Regulation (EU) No 347/2013 of the European Parliament and of the Council*; and
- (ii) All projects with regards to electricity infrastructure, hydrogen infrastructure and carbon dioxide infrastructure.

(b) investment aid for generation of energy from renewable energy sources shall comply with the following requirements:

- (i) aid shall only be granted for new installations selected on a competitive, transparent, objective and non-discriminatory basis in line with the requirements set out in Article 41(10);
- (ii) aid may be granted to combined renewable and electricity or thermal storage projects, provided that the requirements set out in Article 41(1a) are respected;
- (iii) aid may be granted to combined biofuels, bioliquids, biogas (including biomethane) and biomass fuels storage projects, provided that the requirements set out in Article 41(2) are respected;
- (iv) in case of installations producing renewable hydrogen, aid shall only be granted for installation compliant with the requirements set out in Article 41(3);
- (v) in case of installations producing biofuels, aid shall only be granted for installations producing biofuels compliant with the sustainability and greenhouse gases emissions saving criteria referred to in article 29 of Directive (EU) 2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Annex IX to that Directive.

* Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).”;

(c) in paragraph 5, point (a) is replaced by the following:

“(a) the nominal amount of total financing provided to any final beneficiary under the support of the InvestEU Fund shall not exceed:

- (i) EUR 110 million per project for investments in infrastructure used for the provision of social services and for education; EUR 165 million per project for cultural and heritage conservation purposes and activities set out in Article 53(2), including natural heritage;
- (ii) EUR 33 million for activities related to social services;
- (iii) EUR 82.5 million for activities related to culture and heritage conservation; and
- (iv) EUR 5.5 million for education and training.”;

(d) in paragraph 6, point (a)(v) is replaced by the following:

“(v) recharging or refuelling infrastructure that supplies vehicles with electricity or hydrogen. For aided refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 2035 at the latest, the refuelling infrastructure will solely supply renewable hydrogen. This paragraph does not apply to aid for investments relating to recharging and refuelling infrastructure in ports.”;

(e) in paragraph 6, point (b)(iv) is added:

- “(iv) When aid is granted for refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 2035 at the latest, the refuelling infrastructure will solely supply renewable hydrogen. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying ammonia or methanol, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely ammonia or methanol the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.”;
- (f) paragraph 6, point (c) is replaced by the following:
- “(c) the nominal amount of total financing provided under point (a) or (b) to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 165 million.”;
- (g) in paragraph 7, point (a)(ii) is replaced by the following:
- “(ii) investment for resource efficiency and circularity in line with Article 47(1) to (6) and (10);”;
- (h) in paragraph 7, the following point (a)(v) is added:
- “(v) investment in testing and experimentation infrastructures;”;
- (i) in paragraph 7, point (b) is replaced by the following:
- “(b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 110 million.”;
- (j) in paragraph 8, point (a)(i) is replaced by the following:
- “(i) investments enabling undertakings to remedy or prevent damage to physical surroundings (including climate change) or natural resources by a beneficiary’s own activities or by activities of another entity participating in the same project, provided that (i) the investments do not concern equipment, machinery or industrial production facilities using fossil fuels, including natural gas, without prejudice to the possibility to grant aid for the installation of add-on components improving the level of environmental protection of existing equipment, machinery and industrial production facilities, in which case the investment costs shall not relate to CO2-emitting installations; and (ii) in case of investments in equipment, machinery and industrial production facilities using hydrogen, the beneficiary commits to exclusively use renewable hydrogen throughout the lifetime of the investment. Aid shall not be granted under this point for investments undertaken to comply with Union standards that have been adopted, except if the investment is implemented and finalised at least 18 months before the standard enters into force.”;
- (k) in paragraph 8, point (a)(ii) is replaced by the following:
- “(ii) measures improving the energy efficiency of a building or an undertaking, provided that the investments do not concern equipment, machinery or industrial

production using fossil fuels, including natural gas. Aid shall not be granted under this point for investments undertaken to comply with Union standards that have been adopted, except if the investment is implemented and finalised at least 18 months before the standard enters into force. By way of derogation, aid may be granted under this letter for investments in buildings undertaken to comply with minimum energy performance standards qualifying as Union standards, provided that the aid is granted before the standards become mandatory for the undertaking concerned.”;

(l) in paragraph 8, point (a)(vi) is inserted:

“(vi) investment aid for the acquisition of clean vehicles powered at least partially by electricity or by hydrogen, or zero-emission vehicles for road, railway, inland waterway and maritime transport and for the retrofitting of vehicles to qualify as clean vehicles or as zero-emission vehicles;”;

(m) in paragraph 8, point (b) is replaced by the following:

“(b) Without prejudice to point (a), the aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

- (i) the installation of integrated on-site equipment generating electricity, heating or cooling from renewable energy sources, including but not limited to photovoltaic panels and heat pumps;
- (ii) the installation of equipment for the storage of the energy generated by the on-site renewable energy installations;
- (iii) the connection to an energy efficient district heating and/or cooling system and related equipment;
- (iv) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where car parking facilities are located either inside the building or are physically adjacent to the building;
- (v) the installation of equipment for the digitalisation of the building, in particular to increase its smart-readiness, including passive in-house wiring or structured cabling for data networks and the ancillary part of the broadband infrastructure on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property;

(vi) investments in green roofs and equipment for the retention and use of rain water.

The aid measure shall not support the installation of energy equipment using fossil fuels, including natural gas.

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

(n) in paragraph 8, point (e) is replaced by the following:

“(e) aid for energy efficiency improvement measures may also relate to the facilitation of energy performance contracting, subject to the following cumulative conditions:

- (i) the support is provided to SMEs or small mid-caps that are providers of energy performance improvement measures, and which are the final beneficiaries of the aid;
- (ii) the aid is provided for the facilitation of energy performance contracting within the meaning of Article 2, point (27), of Directive 2012/27/EU;
- (iii) the aid takes the form of a senior loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consists in a financial product aimed at financing the provider (for example, factoring or forfaiting);
- (iv) the nominal amount of total outstanding financing provided under this point per beneficiary does not exceed EUR 30 million.”;

(o) paragraph 10 is replaced by the following:

“10. SMEs or, where applicable, small mid-caps may, in addition to the categories of aid provided for in paragraphs 2 to 9, also receive aid in the form of financing supported by the InvestEU Fund provided that the respective conditions are fulfilled:

(a) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 16.5 million and is provided to:

- (i) unlisted SMEs that have not yet been operating in any market or have been operating for less than 10 years following their registration or less than seven years after their first commercial sale; where either the period of operating for less than 10 years following their registration or less than seven years after their first commercial sale has been applied to a given undertaking, only that period can be applied also to any subsequent aid under the present Article to the same undertaking. For undertakings that have acquired another undertaking or were formed through a merger, the eligibility period applied shall also encompass the operations of the acquired undertaking or the merged undertakings, respectively, except for such acquired or merged undertakings whose turnover accounts for less than 10 % of the turnover of the acquiring undertaking in the financial year preceding the acquisition or, in case of undertakings formed through a merger, less than 10 % of the combined turnover that the merging undertakings had in the financial year preceding the merger. Concerning the registration-related eligibility period, if used, for eligible undertakings that are not subject to registration, the ten-year eligibility period is considered to start from the earlier of either the moment when the undertaking starts its economic activity or the moment when it becomes liable to tax with regard to its economic activity. The financing under the support of the InvestEU Fund may also cover follow-on investments in unlisted SMEs after the eligibility period referred to in this point if the following cumulative conditions are fulfilled: (1) the nominal amount of total financing referred to in point (a) is not exceeded, (2) the possibility of follow-on investments was provided for in the original business plan and (3) the final beneficiary receiving the follow-on investment has not become a ‘linked enterprise’, within the meaning of Article 3(3) of Annex I, with another

undertaking other than the financial intermediary or an independent private investor providing financing under the support of the InvestEU Fund, unless the new entity is an SME;

- (ii) unlisted SMEs starting a new economic activity, where the initial investment shall be higher than 50 % of the average annual turnover in the preceding five years. By derogation from the first sentence, the following shall be considered investments for new economic activities, if the related initial investment, based on a business plan, is higher than 30 % of the average annual turnover in the preceding five years: (1) investments significantly improving the environmental performance of the activity beyond mandatory Union standards in accordance with Article 36(2) of this Regulation, (2) other environmentally sustainable investments as defined in Article 2(1) of Regulation (EU) 2020/852, and (3) investments aiming at increasing capacity for the extraction, separation, refining, processing or recycling of a critical raw material listed in Annex IV. The environmentally sustainable character of the investment shall be demonstrated in accordance with Article 3 of Regulation (EU) 2020/852, including the ‘do no significant harm’ principle, or through other comparable methodologies, including, among others, the sustainability proofing for the InvestEU Fund. For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, their compliance with the ‘do no significant harm’ principle is considered fulfilled as this has already been verified;
- (iii) SMEs and small mid-caps that are innovative enterprises as defined in Article 2, point (80);
- (b) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 16.5 million and is provided to SMEs or small mid-caps whose principal activities are located in assisted areas provided that the financing is not used for relocation of activities as defined in Article 2, point (61a);
- (c) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 2.2 million and is provided to SMEs or small mid-caps.”;

(55) Article 56f, paragraph 3, is replaced by the following:

“The nominal amount of total financing provided to each final beneficiary through all commercial financial intermediaries shall not exceed EUR 8,25 million.”;

(56) in Article 58, paragraphs 3a and 4 are replaced by the following:

“3a. Any individual aid granted between 1 July 2014 and [date of entry into force of this amendment] in accordance with the provisions of this Regulation as applicable at the time of granting the aid shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty. Any individual aid granted before 1 July 2014 in accordance with the provisions of this Regulation, with the exception of Article 9, as applicable either before or after 10 July 2017, before or after 3 August 2021, or before or after [date of entry into force of this amendment] shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty.

4. At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months. The exemption

of risk finance aid exempted pursuant to Article 21(9), point (a) shall expire at the end of the period set out in the funding agreement, provided the commitment of public funding to the supported private equity investment fund was made on the basis of such agreement within 6 months from the end of the period of validity of this Regulation and all other conditions for exemption remain fulfilled.”;

(57) in Article 59, the second subparagraph is replaced by the following:

“It shall apply until 31 December 2026.”;

(58) in Annex II, Part II is replaced by the text set out in the Annex to this Regulation.

(59) The following Annex IV is added:

“ANNEX IV

Critical raw materials referred to in Article 21(3)(c) and Article 56e (10)(a)(ii)

The following raw materials shall be considered as critical raw material as referred to in Article 21, paragraph 3, point (c) and Article 56e, paragraph 10, point (a)(ii):

[Placeholder: For the adoption of the Regulation, the list contained in the Commission Proposal for a Critical Raw Materials Act will be included here.]”.

Article 2

Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union²³ is amended as follows:

(60) in Article 56 the following paragraph 3 is added:

“3. This Article shall expire on 30 June 2023.”.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

²³ OJ L 327, 21.12.2022, p. 1.

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

Done at Brussels,

For the Commission
The President