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ANNEX

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*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**

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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 aid<sup>1</sup>, 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 651/2014<sup>2</sup> 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.

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<sup>1</sup> OJ L 248, 24.9.2015, p. 1.

<sup>2</sup> 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 2022<sup>3</sup>, 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 deal<sup>4</sup> and the European Climate Law objectives set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council.<sup>5</sup> 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 Europe<sup>6</sup>, 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

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

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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) 2022/2472<sup>7</sup>, 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.

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<sup>7</sup> 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)<sup>8</sup>. 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.

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<sup>8</sup> 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,<sup>9</sup> 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 evaluation<sup>10</sup> 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,<sup>11</sup> 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 2021<sup>12</sup>. 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.

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

<sup>10</sup> 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).

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

<sup>12</sup> 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 Europe<sup>13</sup> 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 Council<sup>14</sup>. 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 Council<sup>15</sup> 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 2030<sup>16</sup>, 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 change<sup>17</sup> and the Communication on Sustainable Carbon Cycles<sup>18</sup>. Those conditions

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<sup>13</sup> 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.

<sup>14</sup> 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).

<sup>15</sup> 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).

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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 Plan<sup>19</sup>, 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/EC<sup>20</sup> will fall within the scope of Regulation (EU) 651/2014 upon the expiry of Article 56 of Commission Regulation (EU) 2022/2473<sup>21</sup> 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 Plan<sup>22</sup>.

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

<sup>20</sup> 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).

<sup>21</sup> 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).

<sup>22</sup> 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;

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\* 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;

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\* 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.

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\* 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;

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\* 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)\*\*\*\*\*;

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\* 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;

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\* 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\*.

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\* 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.

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\* 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\*;

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\* 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;

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\* 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\*;

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\* 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) CO<sub>2</sub> emission fuels or plug-in power for its normal operation;
  - an inland vessel for freight transport with direct (tailpipe) emissions of CO<sub>2</sub> per tonne kilometre (g CO<sub>2</sub>/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 CO<sub>2</sub> 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) CO<sub>2</sub> 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) CO<sub>2</sub> 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) CO<sub>2</sub> emissions, calculated using the EEDI, 50 % lower than the average reference CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> 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) CO<sub>2</sub> 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) CO<sub>2</sub> emissions;
- (f) concerning rail rolling stock: rolling stock that has zero direct (tailpipe) CO<sub>2</sub> 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;

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\* 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 CO<sub>2</sub> 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\*;

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\* 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;

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\* 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;

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\*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.

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\* 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\*\*;

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\* 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 CO<sub>2</sub> 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 CO<sub>2</sub> emitted from industrial plants, including process-inherent emissions, or to capture it directly from ambient air, and to transport it to a CO<sub>2</sub>-consumption or utilisation site for full usage of that CO<sub>2</sub>;”;

(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 (y*d*) is inserted:

“(y*d*) 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;

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\* 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.

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\* 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.

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\* 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.

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\* 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.

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\* 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.

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\* 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 CO<sub>2</sub>eq/MJ (2.256 tCO<sub>2</sub>eq/tH<sub>2</sub>). 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 CO<sub>2</sub> or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO<sub>2</sub>, 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 CO<sub>2</sub> or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO<sub>2</sub>, 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 CO<sub>2</sub> or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO<sub>2</sub>, 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 CO<sub>2</sub> capture and transport shall fulfil the following cumulative conditions:

- (a) the CO<sub>2</sub> 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 CO<sub>2</sub> emissions shall be taken into account;
- (c) the eligible costs shall be exclusively the additional investment costs stemming from capturing the CO<sub>2</sub> from a CO<sub>2</sub>-emitting installation (industrial installation or power plant) or directly from ambient air as well as from buffer storage and transportation of captured CO<sub>2</sub> 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 CO<sub>2</sub>, 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.

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\* 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.

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\* 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.

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\* 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 CO<sub>2</sub>-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 Union<sup>23</sup> 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*.

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<sup>23</sup> 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*