



EUROPEAN COMMISSION
Competition DG

DRAFT DG COMPETITION PROPOSAL

COMMISSION REGULATION (EU) N° .../...

of **XXX**

**declaring certain categories of aid compatible with the internal market in application of
Articles 107 and 108 of the Treaty**

TABLE OF CONTENTS

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|---|----|
| COMMISSION REGULATION (EU) No .../.. declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty | 3 |
| CHAPTER I | 14 |
| CHAPTER II Procedural requirements | 22 |
| CHAPTER III Specific Provisions for the Different Categories of Aid | 23 |
| Section 1 - Regional aid | 23 |
| Section 2 – Aid for SMEs | 27 |
| Section 3 – Aid for research and development and innovation..... | 33 |
| Section 4- Training aid..... | 35 |
| Section 5 - Aid for disadvantaged and disabled workers | 36 |
| Section 6 – Aid for environmental protection..... | 38 |
| CHAPTER IV Final Provisions | 46 |
| ANNEX I Definitions..... | 48 |
| Definitions for regional aid | 50 |
| Definitions for Aid to SMEs | 54 |
| Definitions for Aid for research and development and innovation..... | 56 |
| Definitions for aid for environmental protection | 59 |
| ANNEX II SME Definition..... | 61 |
| ANNEX III Information regarding State aid exempt under the conditions of this Regulation | 65 |
| ANNEX IV Application form in order for incentive effect (as specified in Article 6) | 71 |
| ANNEX V Provisions for the Member State's single website..... | 72 |

DRAFT DG COMPETITION PROPOSAL

COMMISSION REGULATION (EU) No .../..

of XXX

declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

(Text with EEA relevance)

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 (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid¹, and in particular Article 1(1) (a) and (b) thereof,

[Having published a draft of this Regulation [*OJ reference*],]

[After consulting the Advisory Committee on State Aid,]

Whereas:

- (1) State funding meeting the criteria in Article 107(1) of the Treaty on the Functioning of the European Union ("the Treaty") constitutes State aid and requires notification to the Commission by virtue of Article 108(3) of the Treaty. However, according to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty the Commission may adopt regulations relating to these categories of State aid. By virtue of Regulation (EC) No 994/98, the Council decided, in accordance with Article 109 of the Treaty, that the following categories may be exempt from the notification requirement: aid to small and medium-sized enterprises ('SMEs'), aid in favour of research and development, aid in favour of environmental protection, employment and training aid and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid. On that basis, the Commission adopted Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the internal market in application of Articles 87 and 88 of the Treaty (hereinafter "General block exemption Regulation")² which applies until 31 December 2013.
- (2) With its Communication on EU State Aid Modernisation (SAM)³, the Commission launched a wider review of the State aid rules. The main objectives of this

¹ OJ L 142, 14.5.1998, p. 1.

² OJ L 214, 9.8.2008, p. 3.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU State Aid Modernisation (SAM), 8.5.2012, COM (2012) 209 final.

modernisation are (i) to achieve sustainable, smart and inclusive growth in a competitive internal market, while contributing to Member State efforts towards a more efficient use of public finances; (ii) to focus Commission ex ante scrutiny of aid measures on cases with the biggest impact on the internal market, while strengthening Member State cooperation in state aid enforcement; and (iii) to streamline the rules and provide for faster, better informed and more robust decisions based on a clear economic rationale, a common approach and clear obligations.

- (3) This Regulation, allows for a better prioritisation of enforcement activities, greater simplification and should be combined with greater transparency, effective evaluation and the control of compliance with the State aid rules at national and Union levels, while keeping proportionality and preserving the institutional competences of the Commission and the Member States.
- (4) The Commission's experience in applying Regulation (EC) No 800/2008 has allowed it, on the one hand, to better define the conditions under which certain categories of aid can be considered compatible with the internal market and to extend the scope of block exemptions and, on the other hand, made clear the necessity to strengthen transparency, monitoring and allow for a proper evaluation of large schemes in light of their effect on competition in the internal market.
- (5) The general conditions for the application of this Regulation can be defined on the basis of a set of common principles that ensure that the aid serves a purpose of common interest, meets a well-identified market failure or cohesion need, has a clear incentive effect, is appropriate and proportionate, is awarded in full transparency and subject to a control mechanism and regular evaluation, and does not distort competition and trade beyond what can be accepted from a common interest perspective.
- (6) Any aid that fulfils all the conditions laid down in this Regulation both general and specific to the relevant categories of aid should be exempt from the notification obligation laid down in Article 108(3) of the Treaty.
- (7) State aid within the meaning of Article 107(1) of the Treaty not covered by this Regulation remains subject to the notification requirement of Article 108(3) of the Treaty. This Regulation is without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation.
- (8) In view of the potential of large schemes to distort competition, this Regulation should not apply to schemes with a planned or effective yearly expenditure exceeding a threshold based on national GDP and an absolute value, notably with a view to subjecting them to regular evaluation.
- (9) This Regulation should not apply to aid favouring domestic over imported products or aid to export-related activities. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market should not normally constitute aid to export-related activities.
- (10) This Regulation should apply in principle across most sectors of the economy. However, in some sectors the scope needs to be limited in light of the special rules applicable. In the fisheries and aquaculture sector, this Regulation should apply only to training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, and aid for disadvantaged and disabled

workers. In the primary production of agricultural products, this Regulation should only apply to operating regional aid (compensation for additional costs other than transport costs in an outermost region), aid for research and development, innovation aid for SMEs, environmental aid and aid for disadvantaged and disabled workers to the extent that these categories of aid are not covered by Commission Regulation ... *[replacing Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Article 107 and 108 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products]*.

- (11) Except for training aid where specific provisions exist in Commission Regulation [agricultural block exemption regulation], this Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met. Neither on-farm activities necessary for preparing a product for the first sale, nor the first sale by a primary producer to resellers or processors nor any activity preparing a product for a first sale should be considered processing or marketing for the purposes of this Regulation. The Court of Justice of the European Union has established that, once the Union has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. This Regulation should therefore not apply to aid the amount of which is fixed on the basis of the price or quantity of products purchased or put on the market, nor should it apply to aid which is linked to an obligation to share it with primary producers.
- (12) Taking account of Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines⁴, this Regulation should not apply to aid aimed at facilitating the closure of uncompetitive coal mines under Council Decision of 10 December 2010. Apart from this type of aid, this Regulation shall apply to the coal sector with the exception of regional aid.
- (13) The Commission must ensure that authorised aid does not alter trading conditions in a way contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market should be excluded from the scope of this Regulation.
- (14) Aid granted to undertakings in difficulty should be excluded from the scope of this Regulation, since such aid should be assessed under the Guidelines on State aid for rescuing and restructuring firms in difficulty⁵ in order to avoid their circumvention. In order to provide legal certainty, it is appropriate to establish clear criteria that do not require an assessment of all the particularities of the situation of an undertaking to determine whether an undertaking is considered to be in difficulty for the purposes of this Regulation.
- (15) State aid enforcement is highly dependent on the cooperation of Member States. Therefore, Member States should take all necessary measures to ensure compliance with this Regulation, including compliance of individual aid grants under block-exempted schemes.
- (16) Due to the higher risk of distortion of competition, large amounts of aid granted either individually or cumulatively should be assessed by the Commission upon notification.

⁴ OJ L 336, 21.12.2010, p. 24.

⁵ OJ C 244, 1.10.2004, p. 2, prolonged by the Commission communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004, OJ C 296, 2.10.2012, p.3.

Thresholds should therefore be set for each category of aid within the scope of this Regulation at a level which takes into account the category of aid concerned and its likely effect on competition. Any aid granted above those thresholds remains subject to the notification requirement of Article 108(3) of the Treaty.

- (17) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent ex ante without the need to undertake a risk assessment ('transparent aid'). For certain specific aid instruments, such as loans, guarantees, fiscal measures, risk finance measures and, in particular, repayable advances, this Regulation should define the conditions under which they can be considered transparent. Aid comprised in guarantees should be considered as transparent if the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down for the respective type of undertaking. For instance, for small and medium-sized enterprises, the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees⁶ indicates levels of annual premium above which a State guarantee would be deemed not to constitute aid.
- (18) To ensure that the aid is necessary and acts as an incentive to further develop activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would engage under market conditions alone. Aid should only be exempt from notification under this Regulation if the work on the aided project or activity starts after the beneficiary has submitted a written application for the aid.
- (19) **SUPPLEMENTARY OPTION FOR INCENTIVE EFFECT FOR LARGE ENTERPRISES:** *As regards any aid covered by this Regulation granted to a beneficiary which is a large enterprise, the Member State should, in addition to the conditions applying to SMEs, also ensure that the beneficiary has analysed, in an internal document, the viability of the aided project or activity with aid and without aid. The Member State should verify that this internal document confirms a material increase in size or scope of the project/activity, a material increase in the total amount spent by the beneficiary on the subsidised project or activity or a material increase in the speed of completion of the project/activity concerned. As regards regional aid, incentive effect may also be established on the basis of the fact that the investment project would not have been carried out as such in the assisted region concerned in the absence of the aid.*
- (20) The incentive effect of ad hoc aid granted to large enterprises is most of the time difficult to establish, which is why this form of aid should be excluded from the scope of application of this Regulation. The Commission will examine the existence of incentive effect of such aid in the context of the notification and on the basis of the criteria established in the applicable guidelines, frameworks or other Community instruments. **ALTERNATIVE OPTION FOR AD HOC AID TO LARGE ENTERPRISES:** *Ad hoc aid granted to large enterprises should be included in the scope of this Regulation under the condition that the Member State has verified before, that documentation prepared by the beneficiary establishes a material increase in the size, scope or amount of the project or activity.*
- (21) Automatic fiscal schemes should continue to be subject to a specific condition concerning the incentive effect, in light of the fact that the aid resulting from such schemes is granted within the framework of different procedures than other categories

⁶ OJ C 155, 20.6.2008, p. 10.

of aid. That specific condition means that the aforementioned schemes should have been adopted before work on the aided project or activity started. However, this condition should not apply in the case of fiscal successor schemes provided the activity was already covered by the previous fiscal schemes. For the assessment of the incentive effect of such schemes, the crucial moment is the moment when the fiscal measure was set out for the first time in the original scheme, which is then replaced by the successor scheme.

- (22) As regards aid for the recruitment of disadvantaged workers in the form of wage subsidies aid compensating for the additional costs of employing disabled workers, aid for SMEs' access to finance aid and aid in the form of reductions of environmental taxes, the existence of an incentive effect may be presumed if specific conditions set out for those categories of aid in this Regulation are fulfilled.
- (23) With a view to ensuring that aid is proportionate and limited to the amount necessary, maximum aid amounts should, whenever possible, be defined in terms of aid intensities in relation to a set of eligible costs. Where the maximum aid intensity cannot be set, because eligible costs cannot be identified or in order to provide simpler instruments for small amounts, maximum aid amounts defined in nominal terms should be set out in order to ensure proportionality of aid measures. The aid intensity and the maximum aid amounts should be fixed, in the light of the Commission's experience, at a level that minimises distortions of competition in the aided sector while appropriately addressing the market failure or cohesion issue concerned. For regional investment aid, the aid intensity has to comply with the allowable aid intensities under the regional aid maps.
- (24) For the calculation of aid intensity, all figures used should be taken before any deduction of tax or other charges. Aid payable in several instalments should be discounted to its value at the moment of granting. The eligible costs should also be discounted to their value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the amount of aid in the case of aid which does not take the form of a grant should be the reference rate applicable at the time of the grant, as laid down in the Commission Communication on the revision of the method for setting the reference and discount rates⁷. The identification of eligible costs should be supported by clear, specific and up-to date documentary evidence. Where aid is awarded by means of tax advantages, aid tranches should be discounted on the basis of the reference rates applicable on the various dates when the tax advantages become effective. The use of aid in the form of repayable advances should be promoted, since such risk-sharing instruments are conducive to strengthened incentive effect of aid. It is therefore appropriate to establish that where aid is granted in the form of repayable advances the applicable aid intensities laid down in this Regulation might be increased, with the exception of regional aid (since the latter may be exempt only if it complies with approved maps).
- (25) In the case of tax advantages on future taxes, the applicable reference rate and the exact amount of the aid tranches may not be known in advance. In such a case, Member States should set in advance a cap on the discounted value of the aid respecting the applicable aid intensity. Subsequently, when the amount of the aid tranche at a given date becomes known, discounting can take place on the basis of the reference rate applicable at that time. The discounted value of each aid tranche should be deducted from the overall amount of the cap ("capped amount").

⁷ OJ C 14, 19.1.2008, p. 6.

- (26) To determine whether the individual notification thresholds and the maximum aid intensities laid down in this Regulation are respected, the total amount of state aid measures for the aided activity or project should be taken into account, regardless of how that support is financed. To the extent that the Commission assesses globally the total amount of public support when authorising Union funds centrally managed by the Commission and ensures consistency with State aid rules, the Union funding that is not directly or indirectly under the control of the Member State and does not constitute State aid should not be taken into account in determining whether the notification thresholds and maximum aid intensities are respected.
- (27) Moreover, this Regulation should specify the circumstances under which different categories of aid may be cumulated. Aid exempted by this Regulation and any other compatible aid exempted under this Regulation or approved by the Commission may be cumulated as long as those measures concern different identifiable eligible costs. Where different sources of aid are related to the same – partly or fully overlapping – identifiable eligible costs, cumulation should be allowed up to the highest aid intensity or aid amount applicable to that aid under this Regulation. This Regulation should also set out special rules for cumulation of aid measures with and without identifiable eligible costs, for cumulation with *de minimis* aid and for cumulation with aid in favour of disabled workers.
- (28) Given that State aid within the meaning of Article 107(1) of the Treaty is, in principle, prohibited, it is important that all parties have a possibility to check whether an aid is granted in compliance with the applicable rules. Transparency of State aid is, therefore, essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending. To ensure transparency, this Regulation should require each Member State to establish a single State aid website. This website should be self-standing or retrieves information from several websites (portal). . On that website the Member States should publish summary information about each aid measure exempted under this Regulation in a standardized format, the full text of each aid measure and information about the award of individual aid. That obligation should be a condition for the compatibility of the individual aid with the internal market. The links to the State aid websites of all the Member States should be published on the Commission's website. In accordance with Article 3 of Regulation (EC) No 994/98, summary information on each aid measure exempted under this Regulation should be published in the *Official Journal of the European Union*.
- (29) To ensure effective monitoring of the aid measures in accordance with Regulation (EC) No 994/98, it is appropriate to establish requirements regarding the reporting by the Member States of aid measures which have been exempted pursuant to this Regulation and the application of this Regulation. To enable the Commission to better monitor the cumulative effects of aid, the Member States should report on individual aid awards exceeding a certain aid amount. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation, in light of the limitation period established in Article 15 of Regulation (EC) No 659/1999⁸.
- (30) To reinforce the effectiveness of general compatibility provisions set out in Chapter I of this Regulation as well as of the provisions regarding the procedural requirements set out in Chapter II, it should be possible for the Commission to withdraw the benefit

⁸ OJ L83, 27.3.1999, p. 1.

of the block exemption for the future aid measures in the event of failure to comply with the requirements set out in these Chapters. The Commission may restrict the withdrawal of the benefit of the block exemption to measures in favour of certain beneficiaries or adopted by certain authorities. In case of failure to meet general compatibility conditions set out in Chapter I, aid granted is not covered by this Regulation and, as a consequence, constitutes unlawful aid, which the Commission will examine in the framework of the relevant procedure as set out in Regulation No (EC) No 659/1999. In case of failure to fulfil the requirements of Chapter II, the withdrawal of the benefit of the block exemption in respect of the future aid measures does not affect the fact that the past measures were subject to block exemption.

- (31) To eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Union and national initiatives concerning SMEs, as well as for reasons of administrative clarity and legal certainty, the definition of SME used for the purpose of this Regulation should be based on the definition in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises⁹.
- (32) By addressing the handicaps of disadvantaged regions, regional aid promotes the economic, social and territorial cohesion of Member States and the Union as a whole. Regional aid is designed to assist the development of the most disadvantaged areas by supporting investment and job creation in a sustainable context. In areas fulfilling the conditions of Article 107(3)(a) of the Treaty, regional aid may be awarded to promote the setting-up of new establishments, the extension of existing establishments, the diversification of the output of an establishment or a fundamental change in the overall production process of an existing establishment. Considering that large enterprises are less affected by regional handicaps than SMEs when investing in an area fulfilling the conditions of Article 107(3)(c) of the Treaty, regional aid to large enterprises should be exempt from the notification requirement only for initial investments in favour of new activities in those areas (aid for greenfield investments or the diversification of existing establishments into new products).
- (33) Where a regional aid scheme is targeted at particular sectors of the economy, the objective and likely effects of the scheme may be sectorial rather than horizontal. Therefore, sectoral schemes cannot be exempt from the notification requirement. However, the Commission, upon notification, can assess their possible positive effects under the applicable guidelines or frameworks. In particular, this is the case for regional aid schemes covering economic activities in the coal sector, the shipbuilding sector, the transport sector and airport infrastructure. However, due to specific characteristics of certain sectors, such as steel and synthetic fibres, it is considered that the negative effects of regional aid in those sectors cannot be outweighed by the positive cohesion effects; for these reasons, regional aid in these sectors cannot be granted. However, the tourism sector plays an important role in national economies and, in general, has a particular positive effect on regional development. Regional aid schemes aimed at tourism activities should therefore be exempt from the notification requirement.
- (34) Investments in assisted regions in favour of energy from renewable sources, co-generation and efficient district heating and cooling shall be allowed under the conditions laid down in the environmental section of this Regulation; this shall minimise their high distortive impact on the internal energy market and shall ensure an

⁹ OJ L 124, 20.5.2003, p. 36

increased focus on cost efficiency. In view of their high distortive potential impact on the internal energy market, state aid to electricity generation from non-renewable sources and energy infrastructures shall not be exempt from the notification requirement of Article 108(3) of the Treaty.

- (35) Given the importance of regional development strategies, investments outside operational programs should be selected according to their contribution to the regional development strategies of the areas concerned. For this purpose, Member States can rely on evaluations of past State aid schemes, impact assessments made by the granting authorities, or expert opinions. To ensure that aid schemes meet the objectives of regional development strategies, objectives must be clearly identified. A scoring system should enable the granting authority to prioritise and select the investments according to the objectives.
- (36) So as not to favour the capital factor of an investment over the labour factor, it should be possible to measure regional investment aid on the basis of either the costs of the investment or the wage costs of employment directly created by an investment project.
- (37) Regional investment aid should not be exempt from notification when it is awarded to a beneficiary that closes down the same or a similar productive activity in another area in the EEA in the two years preceding the application for the aid or where the beneficiary has concrete plans to close down such an activity within a period of up to two years after the investment is completed.
- (38) The Commission has gained sufficient experience in the application of Article 107(3)(a) and (c) of the Treaty as regards regional operating aid to compensate the transport costs of goods produced in the outermost regions or in sparsely populated areas and the additional production and operating costs (other than transport costs) incurred by beneficiaries established in the outermost regions. Aid to compensate additional costs in the outermost regions can only be compatible with the internal market and can be exempt from the notification requirement of Article 108(3) of the Treaty in so far as the level of that aid is limited to a certain proportion of the income generated by those undertakings in the outermost region concerned. To minimise the environmental impact and emissions, the aid shall be calculated on the basis of the transport mean which results in the lowest external cost to the environment including energy use.
- (39) Investments corresponding to Europe 2020 priorities in green technologies, R&D&I, shift towards low carbon economy undertaken in less developed regions may receive higher aid amounts by means of a regional bonus. Unless otherwise specified in this Regulation, such initial investments may be supported under the conditions laid down in different sections of this Regulation.
- (40) SMEs play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market failures, leading to these SMEs suffering from typical handicaps. SMEs often have difficulties in obtaining capital or loans, given the risk-averse nature of certain financial markets and the limited collateral that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. To facilitate the development of the economic activities of SMEs, this Regulation should therefore exempt certain categories of aid when they are granted in favour of SMEs.

- (41) Having regard to the specific handicaps and differences between small and medium-sized enterprises, different basic aid intensities and different bonuses may apply.
- (42) On the basis of the experience gained in applying the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises, there appear to be a number of specific risk capital market failures in the Union in respect of certain types of investments at certain stages of the undertakings' development. Those market failures result from an imperfect matching of supply of and demand for risk capital. As a result, the level of risk capital provided in the market may be too restricted and undertakings do not obtain funding despite having a valuable business model and growth prospects. The main source of market failure relevant to risk capital markets, which particularly affects access to capital by SMEs and which may justify public intervention, relates to imperfect or asymmetric information. It affects not only the provision of risk capital, but also hampers access to debt finance for certain SMEs. Consequently, risk finance measures which seek to attract private capital for risk finance provision to unlisted SMEs affected by the funding gap and which ensure profit-driven financing decisions and commercial management of financial intermediaries should be exempt from the notification requirement under certain conditions.
- (43) Under certain conditions, start-up aid for SMEs, aid to alternative trading platforms specialised in SMEs and aid for costs related to the scouting of SMEs prior to their first commercial sale or operating for less than five years following their first commercial sale on a market should also be considered compatible with the internal market and exempt from the notification requirement.
- (44) SMEs participating in the European Territorial Cooperation projects often find difficulties in financing additional costs stemming from the cooperation between partners located in different regions and in different Member States. Given the importance of the European Territorial Cooperation under the Union's cohesion policy, aid for cooperation costs related to projects covered by Commission Regulation [COM(2011)611 ERDF/ETC] should be exempt from the notification requirement.
- (45) The promotion of research, development and innovation is an important objective in the common interest. Aid for research and development and innovation aid for SMEs can contribute to sustainable economic growth, strengthen competitiveness and boost employment. Experience with the application of Regulation (EC) No 800/2008 and the Community framework for State aid for research and development and innovation aid for SMEs shows that market failures may prevent the market from reaching optimal output and lead to inefficiencies. Such inefficient outcomes generally relate to externalities, public goods/knowledge spill-overs, imperfect and asymmetric information, and coordination and network failures.
- (46) Aid for research, development and innovation is of particular importance for SMEs, which may experience difficulties in gaining access to new technological developments, knowledge transfer or highly qualified personnel. Aid for research and development projects, aid for feasibility studies, as well as innovation aid for SMEs, including aid to cover industrial property rights costs for SMEs, may remedy these problems and should therefore be exempt from the requirement of notification under certain conditions.
- (47) As regards project aid for research and development, the aided part of the research project should completely fall within the categories of fundamental research, industrial research or experimental development. When a project encompasses different tasks,

each task should be qualified as falling under the categories of fundamental research, industrial research or experimental development or as not falling under any of those categories. That qualification need not necessarily be chronological, moving sequentially over time from fundamental research to activities closer to the market. Accordingly, a task which is carried out at a late project stage may be qualified as industrial research. Similarly, an activity carried out at an earlier stage may constitute experimental development. The aided part of the project may also include feasibility studies preparatory to research activities.

- (48) High-quality research infrastructures are increasingly necessary for ground-breaking research and innovation because they attract global talent and are essential in particular for new information and communication technologies and key enabling technologies. Public research infrastructures should continue to partner with industry research. Access to publicly funded research infrastructures should be granted on a transparent and non-discriminatory basis and on market terms. If the latter conditions are not respected, the aid measure cannot be exempt from the notification requirement. Multiple parties may own, operate and use a given research infrastructure, and public entities and undertakings may use the infrastructure collaboratively.
- (49) Research infrastructures may perform both economic and non-economic activities. In order to avoid undue State aid to economic activities through public funding of non-economic activities, the costs and financing of economic and non-economic activities must be clearly separable. If an infrastructure is used for both economic and non-economic activities, public funding falls under State aid rules only insofar as it covers costs linked to the economic activities. If the infrastructure is used almost exclusively for a non-economic activity, it may fall outside State aid rules in its entirety, even if it is also used for a purely ancillary economic activity, i.e. an activity which is directly related to and necessary for the operation of the infrastructure or intrinsically linked to its main non-economic use, and is limited in scope.
- (50) The promotion of training and the recruitment / employment of disadvantaged and disabled workers constitutes a central objective of the economic and social policies of the Union and its Member States.
- (51) Training usually generates positive externalities for society as a whole, since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of the Union industry and plays an important role in the Union employment strategy. Such aid should therefore be exempt from the notification requirement under certain conditions. In light of the particular handicaps which SMEs face and the higher relative costs that they must bear when they invest in training, the intensities of aid exempted by this Regulation should be increased for SMEs. Furthermore, the intensities of aid exempted by this Regulation should be increased if the training is given to disabled or disadvantaged workers. The characteristics of training in the maritime transport sector justify a specific approach for that sector.
- (52) Certain categories of disabled or disadvantaged workers still experience particular difficulties in entering and remaining in the labour market. For this reason, public authorities are justified in applying measures providing incentives to undertakings to increase the levels of employment of these categories of workers, in particular of young people. Employment costs form part of the normal operating costs of any undertaking. It is therefore particularly important that aid for the employment of disabled and disadvantaged workers should have a positive effect on employment levels of those categories of workers and should not merely enable undertakings to

reduce costs which they would otherwise have to bear. Consequently, such aid should be exempt from the notification requirement when it is likely to assist those categories of workers in entering or re-entering and staying in the job market.

- (53) Sustainable growth for a resource efficient, greener and more competitive economy is one of the main pillars of the Europe 2020 growth strategy. Sustainable development is based, amongst other things, on a high level of protection and improvement of the quality of the environment. The area of environmental protection is confronted with market failures so that under normal market conditions, undertakings may not necessarily have an incentive to reduce the pollution caused by them since any such reduction may increase their costs without corresponding benefits.
- (54) On the basis of the experience gained by the Commission in the course of the application of the Community guidelines on State aid for environmental protection, several aid measures can be included in the exemption from the notification requirement. Those exempted measures cover the areas of resource efficiency, climate change and energy measures with an environmental benefit.
- (55) In particular, measures concerning energy saving and energy efficiency, cogeneration and district heating target resource efficiency. Measures incentivising undertakings to achieve a higher level of environmental protection than required by Union standards can benefit resource efficiency and the environment more broadly, while aid for the remediation of contaminated sites - which may be justified in cases where the polluter cannot be identified - specifically aims at repairing environmental damage. In this respect, reference is made i.a. to Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage¹⁰, as amended by Directive 2006/21/EC¹¹ and Directive 2009/31/EC¹².
- (56) To achieve the Union renewable energy targets and to the extent additional support is needed on top of a regulatory framework such as Union emission trading scheme, this Regulation provides for the possibility to grant aid on the basis of a technology neutral competitive bidding process which is open to bidders across national borders. Such a process can help the Union to reach its targets in a cost-efficient manner limiting distortions of the internal market. To this extent, Member states are encouraged to engage in cooperation mechanisms foreseen in Directive 2009/28/EC, so as supported energy counts to their national targets.
- (57) Negative prices occur when there is oversupply of electricity. This may also occur due to favourable weather conditions. Renewable producers may continue production until the price falls below the value of the aid. On the one hand, such situation can force all producers to stop their production or to pay for production. On the other hand, it may incentivise the same producers to take demand response measures allowing them to react in more flexible way to falling electricity prices.

¹⁰ OJ L 143, 30.4.2004, p. 56.

¹¹ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC, OJ L 102, 11.4.2006, p. 15.

¹² 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

- (58) It must also be ensured that the applicable sustainable criteria are fulfilled when providing support to renewable energy. Environmental investment aid for the use of biomass shall be exempt only to the extent the aided investments are used exclusively for the use of sustainable biomass, once such sustainability criteria are adopted.
- (59) Aid in the form of tax reductions under Directive 2003/96/EC¹³ favouring environmental protection covered by this Regulation can indirectly benefit the environment and should be limited to a period of ten years. After this period, Member States should re-evaluate the appropriateness of the tax reductions concerned. However, where a specific Article in this Regulation covers the aid measure provided by a tax exemption this Article applies.
- (60) A correct calculation of the extra investment or production costs to achieve environmental protection is essential to determine whether aid is compatible with Article 107(3) of the Treaty. In light of the difficulties which may arise in determining the extra cost resulting from the investment to improve the environmental protection, this Regulation provides a simplified method for calculating the environmental investment costs, capped by maximum aid intensities.

HAS ADOPTED THIS REGULATION:

CHAPTER I

Article I *Scope*

1. This Regulation shall apply to the following categories of aid:
 - (a) regional aid;
 - (b) aid to SMEs in the form of investment aid, operating aid and SMEs' access to finance;
 - (c) aid for environmental protection;
 - (d) aid for research and development;
 - (e) innovation aid for SMEs;
 - (f) training aid;
 - (g) recruitment and employment aid for disadvantaged and disabled workers.
2. This Regulation shall not apply to:
 - (a) schemes for which the planned or effective yearly public expenditure exceeds 0,01% of national gross domestic product (GDP) for the Member State concerned for the previous calendar year¹⁴ and in so far as the planned or effective annual budget of the scheme in question exceeds EUR 100 million. Such schemes shall be notified pursuant to Article 108(3) of the Treaty at the latest six months from the date on which the above condition is met. If several schemes with identical or very similar characteristics are put into effect in the

¹³ OJ L 283, 31.10.2003, p. 51.

¹⁴ Using Eurostat annual data on national GDP in purchasing power standards (PPS).

same Member State within a period of three years, those schemes shall be considered jointly for the purpose of the application of this provision.

- (b) aid to export-related activities namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;
- (c) aid contingent upon the use of domestic over imported goods.

3. This Regulation shall not apply to aid in the following sectors:

- (a) fishery and aquaculture, as covered by Council Regulation (EC) No 104/2000¹⁵; within this sector, however, this Regulation shall apply to training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs and aid for disadvantaged and disabled workers;
- (b) primary production of agricultural products; within this sector, however, this Regulation shall apply to the compensation for additional costs other than transport costs in outermost regions under Article 16(2)(b), aid for research and development, innovation aid for SMEs, environmental aid and aid for disadvantaged and disabled workers;
- (c) processing and marketing of agricultural products, in the following cases:
 - (i) training aid;
 - (ii) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
 - (ii) where the aid is conditional on being partly or entirely passed on to primary producers;
- (d) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision no 2010/787¹⁶;
- (e) categories of regional aid listed in Article 14.

4. This Regulation shall not apply to:

- (a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market;
- (b) ad hoc aid in favour of an undertaking as referred to in point (a);
- (c) aid to undertakings in difficulty.
- (d) ad hoc aid granted to large enterprises, except for ad hoc aid used to supplement aid granted on the basis of regional investment aid schemes.

ALTERNATIVE OPTION: this provision deleted – ad hoc aid to large enterprises is covered by the GBER, however, see stricter requirements as regards the incentive effect in Article 6]

¹⁵ OJ L17, 21.1.2000, p. 22.

¹⁶ OJ L 336, 21.12.2010, p. 24.

5. This Regulation shall not apply to State aid measures, which entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law, in particular:
- (a) aid measures where the grant of aid is subject to the obligation for the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State;
 - (b) aid measures where the grant of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services;
 - (c) aid measures restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.

Article 2 **Definitions**

For the purposes of this Regulation the definitions laid down in Annex I shall apply.

Article 3 **Conditions for exemption**

1. Aid schemes, individual aid granted under aid schemes and ad hoc aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty provided that such aid fulfils all the conditions laid down in Chapter I, as well as the relevant conditions laid down in Chapter III
2. Member States shall take all necessary measures to ensure effective compliance with this Regulation, including compliance of individual aid grants under schemes which are exempt from the notification requirement pursuant to this Regulation.

Article 4 **Notification thresholds**

This Regulation shall not apply to any individual aid, whether granted ad hoc or on the basis of a scheme, the gross grant equivalent of which exceeds the following thresholds:

- (a) regional investment aid: 75% of the maximum amount of aid that an investment with eligible costs of EUR 100 million could receive applying the maximum aid intensity established in an approved regional map and which is in force on the date of granting the aid;
- (b) SME investment aid: EUR 7,5 million per undertaking per investment project;
- (c) risk finance aid: as laid down in article 19(9);
- (d) aid for start-ups: as laid down in Article 20 (3) and (4);
- (e) aid for SMEs' cooperation costs linked to ETC projects: EUR 2 million per undertaking, per project;
- (f) aid for research and development:
 - (i) if the project is predominantly fundamental research: EUR 40 million per undertaking, per project;

- (ii) if the project is predominantly industrial research: EUR 20 million per undertaking, per project;
- (iii) if the project is predominantly experimental development: EUR [10] million per undertaking, per project
- (iv) 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 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), (ii) and (iii) can be increased by [50]%;
- (v) if the project is a EUREKA project or is implemented by a Joint Undertaking established on the basis of Article 187 of the Treaty, the amounts referred to in points (i) to (iii) may be doubled.
- (vi) aid for feasibility studies in preparation for research activities: EUR [7,5] million per study;
- (vii) if the aid concerns the construction or upgrade of research infrastructure: EUR [15] million per infrastructure;
- (g) innovation aid for SMEs: EUR 5 million per beneficiary;
- (h) training aid: EUR 2 million per training project;
- (i) aid for the recruitment of disadvantaged workers: EUR 5 million per undertaking per year;
- (j) aid for the employment of disabled workers in the form of wage costs: EUR 10 million per undertaking per year;
- (k) aid compensating for additional costs of employing disabled workers: EUR 10 million per undertaking per year;
- (l) investment aid for environmental protection, including aid for environmental studies: EUR [7,5] million per undertaking per investment project.

Article 5
Transparency of aid

1. This Regulation shall apply only to transparent aid.
2. In particular, the following categories of aid shall be considered to be transparent:
 - (a) aid comprised in grants and interest rate subsidies;
 - (b) aid comprised in loans, where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant;
 - (c) aid comprised in guarantees:
 - (i) where the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice¹⁷; or

¹⁷ Currently Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 10.

- (ii) where before the implementation, the methodology to calculate the gross grant equivalent of the guarantee has been accepted following notification of that methodology to the Commission under a regulation adopted by the Commission in the State aid area, and the approved methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation;
- (d) aid comprised in fiscal measures, where the measure provides for a cap ensuring that the applicable threshold is not exceeded;
- (e) aid comprised in risk finance measures if the conditions laid down in Article 19 are fulfilled;
- (f) aid for start-ups if the conditions laid down in Article 20 are fulfilled;
- (g) aid in the form of repayable advances, if the total nominal amount of the repayable advance does not exceed the thresholds applicable under this Regulation or if, before implementation of the measure, the methodology to calculate the gross grant equivalent of the repayable advance has been accepted following its notification to the Commission.

Article 6 ***Incentive effect***

1. This Regulation shall apply only to aid which has an incentive effect.
2. Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid in the form laid down in Annex IV to the Member State concerned before work on the project or activity has started.
3. *SUPPLEMENTARY OPTION 1 FOR LARGE ENTERPRISES: Aid granted to large enterprises shall be considered to have an incentive effect if, in addition to fulfilling the condition laid down in paragraph 2, the Member State has verified, before granting the individual aid concerned, that documentation prepared by the beneficiary establishes one or more of the following criteria:*
 - (a) *a material increase in the size of the project/activity due to the aid;*
 - (b) *a material increase in the scope of the project/activity due to the aid;*
 - (c) *a material increase in the total amount spent by the beneficiary on the project/activity due to the aid;*
 - (d) *a material increase in the speed of completion of the project/activity concerned;*
 - (e) *as regards regional investment aid referred to in Article 15, that the project would not have been carried out as such in the assisted region concerned in the absence of the aid.*
4. By derogation from paragraph 2, fiscal measures are deemed to have an incentive effect if the following conditions are fulfilled:
 - (a) the fiscal measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and
 - (b) the fiscal measure has been adopted and in force before work on the aided project or activity has started, however it shall not apply in the case of fiscal

successor schemes provided the activity was already covered by the previous fiscal schemes.

5. By derogation from paragraph 2, the following categories of aid shall be presumed to have an incentive effect if the conditions laid down in the relevant specific provisions in Chapter III are fulfilled:
 - (a) aid for the recruitment of disadvantaged workers in the form of wage subsidies and aid for the employment of disabled workers in the form of wage subsidies, in accordance with Article 28,
 - (b) aid compensating for the additional costs of employing disabled workers, in accordance with Article 29,
 - (c) aid for SMEs' access to finance, in accordance with Articles 17 and 18,
 - (d) aid in the form of reductions in environmental taxes if the conditions laid down in Article 35 are fulfilled.

Article 7 **Proportionality**

1. This Regulation shall apply only to aid which is proportionate.
2. Aid exempted from the notification requirement of Article 108(3) of the Treaty under this Regulation shall be considered to be proportionate if it complies with the maximum aid intensities or amounts established in Chapter III.

Article 8 **Aid intensity and eligible costs**

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. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary.
2. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
3. Aid payable in several instalments shall be discounted to its value at the moment of granting. The eligible costs shall be discounted to their value at the moment of granting. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time of grant.
4. Where aid is granted by means of tax advantages, discounting of aid tranches shall take place on the basis of the reference rates applicable when a tax advantage takes effect.
5. Where aid 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 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 maximum aid intensities laid down in Chapter III may be increased by [10] percentage points.

6. Where regional aid is granted in the form of repayable advances, the maximum aid intensities established in a regional aid map in force at the moment of granting the aid may not be increased.

*[Article X
SME status*

[Whenever the exemption from the notification requirement of Article 108(3) of the Treaty is limited to SMEs or more favourable conditions apply to SMEs under this Regulation, an SME can only benefit from such an exemption or from more favourable conditions under this Regulation provided it does not lose its SME status within [x] years from the grant of the aid due to becoming a partner or linked enterprise within the meaning of Article 3 of Annex II with a large enterprise.]

*Article 9
Cumulation*

1. In determining whether the individual notification thresholds established in Article 4 and the maximum aid intensities established in Chapter III are respected, the total amount of public support measures for the aided activity or project shall be taken into account, regardless of how the measures are financed. However, Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State and does not constitute state aid should not be taken into account, when both such funding and national funding are assessed together for the purpose of compliance with European regulations.
2. Aid with identifiable eligible costs exempted by this Regulation may be cumulated with:
 - (a) any other State aid, as long as those measures concern different identifiable eligible costs,
 - (b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.
3. Aid without identifiable eligible costs exempted under Articles 19, 20 and 21 of this Regulation may be cumulated with any other State aid measure with identifiable eligible costs.
4. State aid exempted under this Regulation shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of this Regulation.
5. By way of derogation from paragraph 1(b), aid in favour of disabled workers, as provided for in Articles 28 and 29, may be cumulated with aid exempted under this Regulation in relation to the same eligible costs above the highest applicable threshold under this Regulation, provided that such cumulation does not result in an aid intensity exceeding 100% of the relevant costs over any period for which the workers concerned are employed.

Article 10
Publication and information

1. The Member State concerned shall publish on a single State aid website, or on a single website retrieving information from several websites:
 - (a) the summary information about each aid measure exempt under this Regulation in the standardised format laid down in Annex III;
 - (b) the full text of each aid measure, including its amendments, or a link providing access to it;
 - (c) the information on each individual aid award in the standardised format laid down in Part III of Annex III.
2. The information mentioned in point (c) of paragraph 1 shall be organised and accessible in a standardized manner, as described in Annex V, and shall allow for effective search and download functions. The information referred to in paragraph 1 shall be up to date and available for at least 10 years from the date on which the aid was granted.
3. The full text of the scheme or of the ad hoc measure referred to in paragraph 1 shall include, in particular, an explicit reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union* and to the specific provisions of Chapter III concerning that act, or where applicable, to the national law which ensures that the relevant provisions of this Regulation are complied with. It shall be accompanied by its implementing provisions and its amendments.
4. The Commission shall publish:
 - (a) on its website, the links to the State aid websites of all Member States, referred to in paragraph 1;
 - (b) in the *Official Journal of the European Union*, the summary information referred to in point (a) of paragraph 1.

Article 11
Withdrawal of the benefit of the block exemption

Where the Member State concerned grants aid allegedly exempted from the notification requirement under this regulation without fulfilling the conditions set out in this Chapter and in Chapter III or fails to meet the requirement set out in Chapter II, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all or some of the future aid measures adopted by the Member State concerned are to be notified to the Commission in accordance with Article 108(3) of the Treaty. The measures to be notified may include, in particular, the measures adopted in favour of certain beneficiaries or the measures adopted by certain authorities of the Member State concerned.

CHAPTER II
Procedural requirements

Article 12
Reporting

Member States shall transmit to the Commission:

- (a) via the Commission's electronic notification system¹⁸, the summary information referred to in Article 10(1)(a), together with a link providing access to the full text of the aid measure as referred to in Article 10(1)(b), within 20 working days following its entry into force;
- (b) information on each individual aid award exceeding EUR 3 million, with the exception of aid under Section 5, in the format laid down in Part III of Annex III, within 20 working days from the day on which the aid is granted;
- (c) an annual report, as referred to in Chapter III of Commission Regulation (EC) No 794/2004 of 21 April 2004¹⁹, in electronic form on the application of this Regulation, containing the information indicated in Annex III to this Regulation, in respect of each whole year or each part of the year during which this Regulation applies.

¹⁸ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Article 3(4); OJ L 140, 1.4.2004, p.1.

¹⁹ OJ L 140, 30.04.2004, p.1.

Article 13

Monitoring

In order to enable the Commission to monitor the aid exempted from notification by this Regulation, Member States shall maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in this Regulation are fulfilled. Such records shall be kept for 10 years from the date on which the individual aid was granted or the last aid was granted under the schemes. The Member State concerned shall provide the Commission within a period of 20 working days or such longer period as may be fixed in the request, with all the information and supporting documentation which the Commission considers necessary to monitor the application of this Regulation.

CHAPTER III

Specific Provisions for the Different Categories of Aid

SECTION 1 - REGIONAL AID

Article 14

Scope of regional aid

1. This Regulation shall not apply to:
 - (a) regional aid which favours activities in the steel sector, the coal sector, the shipbuilding sector, the synthetic fibres sector, the transport sector and airport infrastructure;
 - (b) regional aid in the form of schemes which are targeted at specific sectors of economic activity within the meaning of this Regulation; schemes aimed at tourism activities, broadband infrastructures or agricultural products are not considered to be targeted at specific sectors of economic activity;
 - (c) regional aid in the form of schemes which compensate the transport costs of goods produced in the outermost regions or in sparsely populated areas and:
 - (i) favour activities in the production, processing and marketing of products listed in Annex I to the Treaty; or
 - (ii) favour activities classified as agriculture, forestry and fishing under section A of the NACE Rev. 2, mining and quarrying under section B of the NACE Rev. 2 and electricity, gas, steam and air conditioning supply under section D of the NACE Rev. 2; or
 - (iii) favour transport by pipeline;
 - (d) Regional aid to the energy sector (electricity generation, energy infrastructures, cogeneration, district heating);
 - (e) individual regional investment aid to a beneficiary that has closed down the same or a similar activity in the EEA in the two years preceding its application for regional investment aid or which, at the moment of the aid application, has concrete plans to close down such an activity within a period of up to two years after the investment is completed in the area concerned.

Article 15
Regional investment aid

1. Regional investment aid schemes shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.

Ad hoc aid to supplement aid granted on the basis of regional investment schemes and which does not exceed 50% of the total aid to be granted for the investment, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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. –

ALTERNATIVE OPTION: this provision deleted, if ad hoc aid to large enterprises is exempted from the notification requirement.

2. The aid shall be granted in areas eligible for regional aid as determined in the approved regional aid map for the Member State concerned for the period 2014-2020.
3. For a regional investment aid scheme outside an operational programme, the Member State shall demonstrate that the measure contributes to a regional development strategy with clearly identified objectives and shall include a scoring system that enables the Member State to prioritise and select the investments according to the objectives of the scheme.
4. In assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty, the aid may be granted for an initial investment within the meaning of this Regulation, regardless of the size of the beneficiary. In assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, the aid may be granted to SMEs for any form of such an initial investment, whereas aid to large enterprises shall only be granted for an initial investment in favour of a new activity, within the meaning of this Regulation, in the area concerned.
5. The eligible costs shall be the following:
 - (a) investment costs in tangible and intangible assets;
 - (b) wage costs of employment directly created by the investment, calculated over a period of two years; or
 - (c) a combination of points (a) and (b).

6. The investment shall be maintained in the recipient area for at least five years, or three years in the case of SMEs, after the completion of the investment. If the aid is calculated on the basis of wage costs, each job created through the investment shall be maintained in the area concerned for a period of five years from the date the post was first filled in or three years in case of SMEs. This shall not prevent the replacement of plant or equipment which has become out-dated due to rapid technological change, provided that the economic activity is retained in the area concerned for the above mentioned minimum period.
7. For large enterprises, the assets acquired must be new. The acquisition of tangible assets under lease shall fulfil the following conditions:
 - (a) for the lease of land and buildings, the lease must continue for at least five years after the anticipated date of the completion of the investment project or three years in the case of SMEs;
 - (b) for the lease of plant or machinery, the lease must take the form of financial leasing and contain an obligation to purchase the asset at the expiry of the term of the lease.

In the case of acquisition of an establishment, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. The transaction shall take place under market conditions. The assets for the acquisition of which aid has already been granted prior to the purchase shall not be considered as eligible. In the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought by an independent investor shall be waived.
8. Employment directly created by a regional investment project shall fulfil the following conditions:
 - (a) posts shall be filled-in within three years of completion of works; and
 - (b) the investment project shall lead to a net increase in the number of employees in the undertaking concerned, compared with the average over the previous 12 months.
9. Regional aid for broadband network development shall fulfil the following conditions:
 - (a) aid shall be granted only to areas where there is no infrastructure of the same category (either broadband or NGA) and where none is likely to be developed in the near future; and
 - (b) the subsidised network operator must offer active and passive wholesale access under fair and non-discriminatory conditions with the possibility of effective and full unbundling; and
 - (c) aid shall be allocated on the basis of a competitive selection process.
10. Regional aid for research infrastructures shall be granted only to infrastructures that grant access on a transparent and non-discriminatory basis.
11. The aid intensity in gross grant equivalent shall not exceed the maximum aid intensity established in the regional aid map which is in force at the time the aid is granted in the area concerned. Where the aid intensity is calculated on the basis of

paragraph 5, the maximum aid intensity shall not exceed the most favourable amount resulting from the application of that intensity on the basis of investment costs or wage costs. For large investment projects with eligible costs below EUR 100 million, the maximum aid intensity may be granted only for eligible costs up to 50 million. The maximum aid intensity is reduced by 50% in respect of eligible costs exceeding the first EUR 50 million.

12. For an initial investment linked to European Territorial Cooperation projects covered by [COM(2011)611 ERDF/ETC Regulation], 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 biggest part of the eligible costs is incurred. In assisted areas eligible for aid under Article 107(3)(c) of the Treaty, this provision shall apply only to SMEs.
13. With the exception of aid granted in favour of large investment projects, the maximum aid intensity established in the relevant regional aid map may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.
14. The aid beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support. However, where the maximum aid intensity exceeds 75% because it is increased in accordance with paragraph 13 of this Article, the financial contribution of the beneficiary shall be reduced accordingly.

Article 16

Regional operating aid

1. Regional operating aid schemes in outermost regions and sparsely populated areas shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The regional operating aid schemes shall compensate for:
 - (a) the transport costs of goods which have been produced in areas eligible for operating aid;
 - (b) additional costs other than transport costs in an outermost region.

The beneficiaries of compensation for the transport costs of goods which have been produced in areas eligible for operating aid shall be undertakings established in those areas. The aid shall be calculated on the basis of a fixed sum per tonne-kilometre or TEU²⁰-kilometre or per other relevant unit. Each fixed sum shall be established by reference to a standard scale of transport costs according to the means of transport or the type of goods, or a combination of both. Each standard scale of transport costs shall be established ex ante on the basis of the journey from the point of origin to the point of destination within the Member State concerned using the means of transport or combination of means of transport which results in the lowest cost for the beneficiaries. The selection of the means of transport or combination of means of

²⁰ Twenty-foot equivalent unit (TEU).

transport used for the standard scale of transport costs shall favour the means of transport which result in lower external costs to the environment.

The beneficiaries of compensation for additional costs other than transport costs in an outermost region shall be undertakings established in these regions. The annual aid amount per beneficiary shall not exceed the lowest of the following amounts:

- 10% of the annual sales revenues incurred by the beneficiary in the outermost region concerned;
- 10% of the annual net turnover of the beneficiary incurred by the beneficiary in the outermost region concerned.

3. The eligible costs shall be the following:

(a) the transport costs for:

- the transport of finished goods produced in an eligible area, from their point of origin in that eligible area to the point of destination in another region of the Member State concerned or in another Member State;
- the transport of raw materials or intermediate products used in the production of the goods, from their point of origin in another region of the Member State concerned or in another Member State or in a third country to their point of destination in an eligible area;
- in the outermost regions only, the transport of raw materials or intermediate products produced in the outermost region concerned from their place of production to their place of final processing in the region concerned;

(b) additional production and operating costs, other than transport costs, incurred by beneficiaries established in the outermost regions as a direct effect of one or several of the permanent handicaps referred to in Article 349 of the Treaty.

4. The aid intensity shall not exceed 100% of the eligible costs.

SECTION 2 – AID FOR SMES

Article 17

SME investment aid

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

2. The eligible costs shall be the following:

- (a) the costs of investment in tangible and intangible assets; or
- (b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years.

3. In order to be considered an eligible cost for the purposes of this Regulation, an investment shall consist of the following:
 - (a) an investment in tangible and/or intangible assets relating to the setting-up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or
 - (b) the acquisition of the capital assets directly linked to an establishment, where the establishment has closed or would have closed had it not been purchased, and the assets are bought by an independent investor. The transaction shall take place under market conditions.

In the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought by an independent investor shall be waived. The sole acquisition of the shares of an undertaking shall not constitute investment.
4. In order to be considered an eligible cost for the purposes of this Regulation, intangible assets shall fulfill the following conditions:
 - (a) they must be used exclusively in the undertaking receiving the aid; and
 - (b) they must be regarded as amortizable assets; and
 - (c) they must be purchased from third parties at arms' length; or
 - (d) they must be included in the assets of the undertaking for at least three years;
5. In order to be considered an eligible cost for the purposes of this Regulation, employment directly created by an investment project shall fulfill the following conditions:
 - (a) employment shall be created within three years of completion of the investment;
 - (b) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months;
 - (c) the employment created shall be maintained during a minimum period of three years from the date the post was first filled.
6. The aid intensity shall not exceed:
 - (a) 20% of the eligible costs in the case of small enterprises;
 - (b) 10% of the eligible costs in the case of medium-sized enterprises.

Article 18

Aid for SMEs' cooperation costs linked to ETC projects

1. Aid for cooperation costs incurred by SME's participating in the European Territorial Cooperation projects covered by Regulation [COM(2011)611 ERDF/ETC] shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 shall be eligible:

- (a) costs for organisational cooperation;
- (b) costs of advisory and support services linked to cooperation and delivered by outside consultants and service providers;
- (c) travel expenses, costs of materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the project.

The services referred to in paragraph 2(b) above shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

- 3. The aid amount shall not exceed 50% of the eligible costs.

Article 19

SMEs' access to finance: risk finance aid

- 1. Risk finance aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 risk finance measure may take the form of:
 - (a) equity or quasi-equity investments made in financial intermediaries providing risk finance directly or indirectly to eligible SMEs; or
 - (b) guarantees for investors or financial intermediaries to cover losses from risk finance provided to eligible SMEs; or
 - (c) loans to financial intermediaries providing risk finance to eligible SMEs; or
 - (d) fiscal incentives to independent private investors that are natural persons providing risk finance to eligible SMEs.
- 3. The risk finance measure shall be open to all types of financial intermediaries fulfilling predefined criteria objectively justified by the nature of the investment and shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. This condition shall not apply to entities entrusted by a Member State with implementing the risk finance measure.
- 4. The risk finance measure shall target SMEs that at the time of the initial risk finance provision are unlisted and fulfill one of the following eligibility criteria:
 - (a) have been operating in any market for less than [5] years following their first commercial sale; or
 - (b) have achieved, since their registration, an average annual turnover not exceeding 10% of the total funding provided under the risk finance measure; or
 - (c) have sought support under the risk finance measure with a view to entering a new product market and discontinuing their previous commercial activities on the basis of a business plan setting the terms and conditions of such a transition.

5. The risk finance measure may also support follow-on investments made after the 5-year period mentioned in point (a) of paragraph 4.
6. The risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least [50]% of each investment round into the eligible SMEs.
7. For equity instruments falling under paragraph 2(a) of this Article, no more than 30% of the fund's aggregate capital contributions and uncalled committed capital shall be used for purposes other than the provision of risk finance to the eligible SMEs.
8. The provision of risk finance to the eligible SMEs may take the form of equity, quasi-equity investments, risk finance loans, or a mix thereof.
9. The total amount of risk finance referred to in paragraph 8 of this Article shall not exceed EUR [10] million per eligible SME.
10. The risk finance measure shall leverage additional finance from private independent investors at the level of the financial intermediaries or the eligible SMEs, so as to achieve an aggregate amount reaching the following minimum thresholds:
 - (a) [10%] of the risk finance provided to the eligible SMEs prior to their first commercial sale on any market;
 - (b) [40%] of the risk finance provided to the eligible SMEs referred to in paragraph 4 of this Article;
 - (c) [60%] of the risk finance for follow-on investment after the 5-year period mentioned in paragraph 4(a) of this Article.
11. The risk finance measure shall fulfill the following conditions:
 - (a) financial intermediaries, investors and managers shall be selected through an open, transparent and non-discriminatory call aimed at establishing appropriate risk-reward sharing arrangements whereby asymmetric profit sharing shall be given preference over downside protection.;
 - (b) in the case of asymmetrical loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at [20%] of its total investment;
 - (c) in the case of guarantees falling under point (b) paragraph 2, the guarantee rate shall be limited to [50]% and total losses assumed by a Member State shall be capped at [20]% of the underlying guaranteed portfolio.

Point (a) shall not apply to entities entrusted by a Member State with implementing the risk finance measure.
12. For risk finance measures involving financial intermediaries, the following conditions shall be fulfilled in order to ensure profit-driven financing decisions:
 - (a) the financial intermediary shall be established according to the applicable laws and a due diligence process shall take place to ensure a commercially sound investment strategy, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of its portfolio of investments; and
 - (b) risk finance provision to the eligible SMEs shall be based on a viable business plan, containing details of product, sales and profitability development, establishing *ex-ante* financial viability; and

- (c) a clear and realistic exit strategy shall exist for each investment.
13. Financial intermediaries shall be managed on a commercial basis. This is considered to be the case when the following conditions are fulfilled:
- (a) the manager must be independent, professional and obliged by law or contract to act with the diligence of a professional manager and in good faith; and
 - (b) the manager's remuneration shall conform to market practices; and
 - (c) the manager shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources on the same risk conditions as the public investor; and
 - (d) there shall be an agreement between the manager and investors, setting out the investment strategy, criteria and the proposed timing of investments; and
 - (e) private investors shall be represented in the governance bodies of the investment intermediary in proportion to their participation, but shall not be involved in the day-to-day financing decisions.

The condition laid down in point (b) shall be presumed to be met when the manager is selected through an open, transparent and non-discriminatory competitive call, based on objective criteria linked to experience, expertise and operational and financial capacity.

14. A risk finance measure providing guarantee and loan instruments falling under paragraph 2(b) and (c) of this Article shall fulfill the following conditions:
- (a) the financial intermediary shall be able to demonstrate on the basis of its previous 3-year financial statements that the loan portfolio supported under the risk finance measure includes a significant number of SMEs which, in the light of its internal rating criteria, would not have been financed without the measure;
 - (b) the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9.

Article 20

SMEs' access to finance: aid for start-ups

1. Start-up aid schemes shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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. Eligible undertakings shall be unlisted enterprises up to five years following their registration, which have not yet distributed profits and have not been formed through a merger and which are:
 - (a) small enterprises; or
 - (b) small and innovative enterprises, within the meaning of this Regulation.
3. Start-up aid shall take the form of:
 - (a) loans with interest rates, which are not conform with market conditions, up to five years duration and up to a maximum nominal amount of EUR [2] million, or EUR [3] million for undertakings established in assisted areas fulfilling the

- conditions of Article 107(3)(c) of the Treaty, or EUR [4] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty;
- (b) guarantees with premiums which are not conform with market conditions, up to five years duration and up to maximum EUR [3] million nominal amount, or EUR [4.5] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR [6] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty;
 - (c) grants, interests rate and guarantee fee reduction up to EUR [0.4] million gross grant equivalent or EUR [0.6] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR [0.8] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty.
4. For small and innovative enterprises, the maximum amounts set out in paragraph 3 may be doubled.
 5. A beneficiary may receive the aid only once during the period in which it qualifies as a start-up.

Article 21

Aid to alternative trading platforms specialised in SMEs

1. Aid in favour of alternative trading platforms specialised in SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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. Where the platform operator is an SME, the aid measure may take the form of start-up aid to the platform operator, in which case the conditions laid down in Article 20 shall apply.
3. The aid measure may take the form of fiscal incentives to independent private investors investing through the platform which are natural persons in respect of their risk finance investments into SMEs through an alternative trading platform.

Article 22

Aid for scouting costs

1. Aid covering part of scouting costs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 eligible costs shall be the costs of scouting or initial screening prior to formal due diligence undertaken by professional private fund managers or investors to identify target undertakings prior to the due diligence phase
3. Aid may take the form of a grant.
4. The aid intensity shall not exceed [50]% of the eligible costs.

SECTION 3 – AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION

Article 23

Aid for research and development projects

1. Aid for research and development projects shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 aided part of the research and development project shall completely fall within one or more of the following categories:
 - (a) fundamental research;
 - (b) industrial research;
 - (c) experimental development;
 - (d) feasibility studies.
3. The eligible costs shall be allocated to a specific category of research and development and shall be the following:
 - (a) personnel costs;
 - (b) costs of instruments, equipment, buildings and land to the extent and for the period used for the research and development project;
 - (c) cost of contractual research, knowledge and patents bought or licensed from outside sources at arm's length, as well as costs of consultancy and equivalent services used exclusively for the research activity;
 - (d) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the research and development project;

Where aided projects result in a commercially usable prototype or pilot, the net revenues from the first five years of commercial use shall be deducted from the eligible costs ex ante or ex post.
4. The eligible costs for feasibility studies shall be the costs of the study.
5. The aid intensity for each beneficiary shall not exceed:
 - (a) 100% of the eligible costs for fundamental research;
 - (b) 50% of the eligible costs for industrial research;
 - (c) 25% of the eligible costs for experimental development;
 - (d) 50% of the eligible costs for feasibility studies.
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 as follows:
 - (a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
 - (b) by 15 percentage points if:

- (i) the project involves effective collaboration and the project involves at least one SME or is carried out in at least two Member States and no single undertaking bears more than 70% of the eligible costs, or at least one research and knowledge-dissemination organisation is involved, which bears solely or together with other such organisations at least 10% of the eligible costs and has the right to publish the own research results; or
 - (ii) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software;
- (c) by [5] percentage points for investments in commercially usable prototypes and pilot projects by large enterprises established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, to the extent that the eligible costs under the present Article overlap with the costs eligible under Article 15 [Regional investment aid] and up to the lowest aid intensity authorised in assisted areas fulfilling the conditions of Article 107(3)(a).

Article 24

Investment aid for research infrastructures

1. Aid for the construction or upgrade of research infrastructures that perform economic activities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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. When a research infrastructure pursues both economic and non-economic activities, their respective financing, costs and revenues must be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.
3. The price charged for the operation or use of the infrastructure shall correspond to the market price.
4. Access to the infrastructure shall be granted on a transparent and non-discriminatory basis. By way of derogation from this principle, undertakings which have financed at least 50% the investment costs of the research infrastructure may have preferential access to such infrastructure, provided that such access is granted at market price, is limited in time and that the preferential-access conditions are made publicly available.
5. The eligible costs shall be the investment costs in intangible and tangible assets.
6. The aid intensity shall not exceed [25]% of the eligible costs.

It may be increased to [35]% of the eligible costs for infrastructures located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and to [30]% of the eligible costs for infrastructures located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Article 25

Innovation aid for SMEs

1. Innovation aid for SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 shall be eligible:
 - (a) costs for obtaining and validating patents and other industrial property rights;
 - (b) costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;
 - (c) costs for innovation advisory and support services;
 - (d) costs for process or organisational innovation;
 - (e) costs for the participation in a fair or exhibition presenting new or significantly improved products and/or services.
3. The aid intensity shall not exceed 50% of the eligible costs.

Article 26

Aid for research and development in the fishery and aquaculture sector

1. Aid for research and development in the fishery and aquaculture sector shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I of this Regulation are fulfilled.
2. The research and development project shall be of interest to all operators in the particular sector or sub-sector concerned.
3. Information that the research and development will be carried out and the goal of such research and development, shall be published on the internet, prior to the commencement of the research and development. An approximate date when the results are expected and the place where they will be published on the internet, as well as a statement that the result will be available at no cost, must be included.

The results of the research and development shall be made available on internet, for a period of at least 5 years. They shall be published no later than any information which may be given to members of any particular organisation.
4. The eligible costs shall be those provided in Article 23(3).
5. The aid intensity shall not exceed 100% of the eligible costs.

SECTION 4- TRAINING AID

Article 27

Training aid

1. Training aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 where training ensures that companies comply with national mandatory standards on training.
3. The eligible costs shall be:
 - (a) trainers' personnel costs, for the hours during which the trainers participate in the training;
 - (b) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project;
 - (c) advisory service costs linked to the training project;
4. The aid intensity shall not exceed [50%] of the eligible costs. It may be increased, up to a maximum aid intensity of 70% of the eligible costs, as follows:
 - (a) by 10 percentage points if the training is given to disabled or disadvantaged workers;
 - (b) by 10 percentage points if the aid is awarded to medium-sized enterprises and by 20 percentage points if the aid is awarded to small enterprises;
5. Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 100% of the eligible costs provided that the following conditions are met:
 - (a) the trainee is not an active member of the crew but is supernumerary on board; and
 - (b) the training is carried out on board of ships entered in Union registers.

SECTION 5 - AID FOR DISADVANTAGED AND DISABLED WORKERS

Article 28

Aid for the recruitment of disadvantaged workers or for the employment of disabled workers in the form of wage subsidies

1. Aid schemes for the recruitment of disadvantaged workers or for the employment of disabled workers shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 aid must lead to a net increase in the number of disadvantaged or disabled employees in the undertaking concerned, compared with the average over the previous twelve months.
3. Paragraph 2 does not apply where the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy or expiry of a fixed term contract.
4. Except in the case of lawful dismissal for misconduct the disadvantaged or disabled worker shall be entitled to continuous employment for a minimum period consistent with the applicable national legislation or any collective agreements governing employment contracts.
5. If the period of employment is shorter than 12 months, the aid shall be reduced pro rata accordingly.
6. Eligible costs shall be:
 - (a) the wage costs over a maximum period of 12 months following recruitment of a disadvantaged worker;
 - (b) the wage costs over a maximum period of 24 months following recruitment of a severely disadvantaged worker;
 - (c) the wage costs over any given period during which the disabled worker is employed.
7. The aid intensity shall not exceed:
 - (a) 50% of the eligible costs, as regards aid for the recruitment of disadvantaged workers;
 - (b) 75% of the eligible costs, as regards aid for the employment of disabled workers.

Article 29

Aid for compensating the additional costs of employing disabled workers

1. Aid for compensating the additional costs of employing disabled workers shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 eligible costs shall be the following:
 - (a) costs of adapting the premises;
 - (b) costs of employing staff solely for time spent on the assistance of the disabled workers;
 - (c) costs of adapting or acquiring equipment, or acquiring and validating software for use by disabled workers, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not disabled;
 - (d) where the beneficiary provides sheltered employment, the costs of constructing, installing or expanding the establishment concerned, and any

costs of administration and transport which result directly from the employment of disabled workers.

3. The aid intensity shall not exceed 100% of the eligible costs.

SECTION 6 – AID FOR ENVIRONMENTAL PROTECTION

Article 30

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

1. Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 investment shall fulfill one of the following conditions:
 - (a) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
 - (b) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.
3. Aid may not be granted where investments are to ensure that companies comply with Unions standards already adopted and not yet in force.
4. By derogation from paragraph 3, aid may be granted for
 - the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted EU standards, provided that the acquisition occurs before these standards enter into force and that, once mandatory, they do not apply retroactively to vehicles already purchased
 - for retrofitting operations of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the EU standards were not yet in force at the date of entry into operation of these vehicles and that, once mandatory, they do not apply retroactively to these vehicles.
5. The eligible costs shall be the investment costs necessary to go beyond the applicable Union standards. The costs not directly linked to the achievement of the higher level of environmental protection are not eligible. In particular, the eligible costs shall be the following:
 - (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
 - (b) where the costs of investing in environmental protection can be identified by reference to a similar, less environmental friendly investment, this environmental protection-related cost shall constitute the eligible costs.

- (c) in all other cases, the total investment costs to go beyond the applicable Union standards or to achieve a higher level of environmental protection in the absence of Union standards. The eligible costs shall be the costs of investment in tangible assets and/or in intangible assets.

6. The aid intensity shall

- not exceed [x]% of the eligible costs if the eligible costs are calculated on the basis of point 5a or 5b.
- not exceed [x]% of the eligible cost if the eligible costs are calculated on the basis of point 5c.

The aid intensity may be increased by [x] percentage points for aid awarded to medium sized enterprises and [x] percentage points for aid awarded to small enterprises.

[The aid intensity may be increased by [5] percentage points for aid awarded to large enterprises established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, to the extent that the eligible costs under the present Article overlap with the costs eligible under Article 15 [Regional investment aid] and up to the lowest aid intensity applicable in assisted areas fulfilling the conditions of Article 107(3)(a).]

7. Aid for investments relating to the management of waste of other undertakings shall not be exempt under this Article.

Article 31

Investment aid for early adaptation to future Union standards for SMEs

1. Aid allowing SMEs to comply with new Union standards which increase the level of environmental protection and are not yet in force shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 Union standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.
3. The eligible costs shall be the investment costs necessary to go beyond the applicable Union standards. The costs not directly linked to the achievement of the higher level of environmental protection shall not be eligible. In particular, the eligible costs shall be the following:
 - (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
 - (b) where the costs of investing in environmental protection can be identified by reference to a similar, less environmental friendly investment, this environmental protection-related cost shall constitute the eligible costs.
 - (c) in all other cases, the total investment costs to early adapt to Union standards. The eligible costs shall be the costs of investment in tangible assets and/or in intangible assets.

4. The aid intensity shall not exceed

- [x]% of the eligible costs for small enterprises and [x]% of the eligible costs for medium-sized enterprises if the implementation and finalisation take place more than three years before the date of entry into force of the standard and if the eligible costs are calculated on the basis of point 3a or 3b;
- [x]% of the eligible costs for small enterprises if the implementation and finalisation take place between one and three years before the date of entry into force of the standard and if the eligible costs are calculated on the basis of point 3a or 3b ;
- [x]% of the eligible costs for small enterprises and [x]% of the eligible costs for medium-sized enterprises if the implementation and finalisation take place more than three years before the date of entry into force of the standard and if the eligible costs are calculated on the basis of point 3c;
- [x]% of the eligible costs for small enterprises if the implementation and finalisation take place between one and three years before the date of entry into force of the standard if the eligible costs are calculated on the basis of point 3c.

[The aid intensity may be increased by [5] percentage points for aid awarded to large enterprises established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, to the extent that the eligible costs under the present Article overlap with the costs eligible under Article 15 [Regional investment aid] and up to the lowest aid intensity applicable in assisted areas fulfilling the conditions of Article 107(3)(a).]

Article 32

Investment aid for energy saving measures

1. Investment aid enabling undertakings to achieve energy savings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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. Aid may not be granted where improvements are to ensure that companies comply with Union standards already adopted.
3. The eligible costs shall be the investment costs necessary to achieve the higher level of environmental protection. The costs not directly linked to the achievement of the higher level of environmental protection shall not be eligible. In particular, the eligible costs shall be the following:
 - (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
 - (b) where the costs of investing in environmental protection can be identified by reference to a similar, less environmental friendly investment, this environmental protection-related cost shall constitute the eligible costs.
 - (c) in all other cases, the total investment costs to achieve a higher level of environmental protection. The eligible costs shall be the costs of investment in tangible assets and/or in intangible assets.

4. The aid intensity shall
- not exceed [x]% of the eligible costs if the eligible costs are calculated on the basis of point 3a or 3b.
 - not exceed [x]% of the eligible cost if the eligible costs are calculated on the basis of point 3c.

The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.

[The aid intensity may be increased by [5] percentage points for aid awarded to large enterprises established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, to the extent that the eligible costs under the present Article overlap with the costs eligible under Article 15 [Regional investment aid] and up to the lowest aid intensity authorised in assisted areas fulfilling the conditions of Article 107(3)(a).]

Article 33

Investment aid for high-efficiency cogeneration

1. Investment aid for high-efficiency cogeneration shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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. A new cogeneration unit shall overall make primary energy savings compared to separate production as provided for by Directive 2012/27/EU²¹. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.
3. The investment aid shall be granted to newly installed capacities not exceeding [x] MW.
4. The eligible costs shall be investment costs for the additional equipment needed for the installation to operate as a high-efficiency cogeneration installation.
5. The aid intensity shall not exceed [x]% of the eligible costs. The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.

OPTION: *The aid intensity may be increased to [x]% of the eligible costs for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and to [x]% of the eligible costs for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.*

²¹ OJ L 315, 14.11.2012, p. 1.

Article 34

Investment aid for the promotion of energy from renewable sources

1. Aid for the promotion of energy from renewable energy sources shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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. Aid for the production of biofuels shall be exempt from the notification requirement only to the extent that the investments are used exclusively for the production of sustainable biofuels.
3. The aid must comply either with paragraphs 4 to 7, or alternatively with paragraph 8.
4. The investment aid shall be granted to newly installed capacities not exceeding [x] MW.
5. The eligible costs shall be investment costs necessary to achieve the higher level of environmental protection. The costs not directly linked to the achievement of the higher level of environmental protection are not eligible.
6. If electricity is supplied to the grid, the producers or where relevant aggregator shall be subject to standard obligations regarding network connection and network connection charges and shall bear responsibility, in financial terms, for all deviations (imbalances) between their scheduled and actual generation within a given imbalance settlement period. Subject to commercial arrangements this responsibility can be outsourced to other balance responsible parties.
7. The aid intensity shall not exceed [x]% of the eligible costs.
The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.
OPTION: The aid intensity may be increased to [x]% of the eligible costs for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and to [x]% of the eligible costs for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.
8. [The aid shall be granted in a genuinely competitive, technology-neutral bidding process on the basis of clear, transparent and non-discriminatory criteria, effectively ensuring that the aid is limited to the minimum necessary for delivering newly installed renewable energy. Such a bidding process shall comply with the following requirements:
 - (i) It shall provide for the participation of a sufficient number of undertakings.
 - (ii) The budget related to the bidding process shall be a binding constraint in the sense that not all bidders can receive aid.
 - (iii) The aid shall be granted on the basis of the initial bid submitted by the bidder, thus excluding subsequent negotiations.
 - (iv) The bidding process shall be open to bidders from all EEA countries. Member States shall ensure that a cooperation mechanism is in place with the countries in which bidders may be located. Member States may

require that the bidder ensures that it is able to deliver the electricity to the Member State granting the aid.

- (v) A cap may be imposed for each stage of the auction process to ensure that the bidding process is genuinely competitive in each stage. All technologies shall be able to make bids within the established cap and at each stage of the process while ensuring the cheapest technology cannot be overcompensated.

OPTION 1

- (vi) The aid shall be granted in the form of a Feed-in Premium.
- (vii) The bidders shall be made to bear standard balancing responsibilities and be subject to standard obligations regarding network connection and network connection charges in the Member State where electricity is produced.

(vii)

OPTION 2

- (vi) *The aid shall be granted in the form of a Feed-in Premium for power generated, and sold on the electricity market.*
- (vii) *The bidders shall be made to bear the responsibility, in financial terms, for all deviations (imbalances) between their scheduled and actual generation within a given imbalance settlement period. Subject to commercial arrangements this responsibility can be outsourced to other balance responsible parties and shall be subject to standard obligations regarding network connection and network connection charges in the Member State where electricity is produced. Renewable producers shall not be exempted from obligations offering balancing services to the Transmission System Operators, where technologically possible.]*

Article 35

Aid in the form of reductions in environmental taxes under Directive 2003/96/EC

1. Aid schemes in the form of reductions in environmental taxes fulfilling the conditions of Directive 2003/96/EC²² shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 beneficiaries of the tax reduction shall pay at least the Union minimum tax level set by Directive 2003/96/EC.
3. Tax reductions shall be granted for maximum periods of [ten] years. After such period, Member States shall re-evaluate the appropriateness of the aid measures concerned.
4. This Article shall not apply to aid in the form of tax exemptions that are covered by other provisions of this Section.

Article 36

Investment aid for remediation of contaminated sites

1. Investment aid to undertakings repairing environmental damage by remediating contaminated sites shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 investment shall lead to an improvement of environmental protection. The environmental damage to be repaired shall cover damage to the quality of the soil or of surface water or groundwater.
3. Aid shall be granted only when the polluter -i.e. the person liable under the law applicable in each Member State without prejudice to the adoption of EU rules in this matter - is not identified or cannot be held legally liable for financing the remediation in accordance with the "polluter pays" principle. Where the polluter is identified and where it can be held liable, that person must finance the remediation in accordance with the "polluter pays" principle, and no State aid shall be granted.
4. The eligible costs shall be the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may rank as eligible investment in the case of the remediation of contaminated sites.
5. Evaluations of the increase in value of the land resulting from remediation have to be carried out by an independent expert.
6. The aid intensity shall not exceed [x]% of the eligible costs.

²² OJ L 283, 31.10.2003, p. 51.

Article 37

Investment aid for energy efficient district heating and cooling

1. Investment aid for the installation of an efficient district heating and cooling system shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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 system satisfies the definition of efficient district heating and cooling system as set out in Article 2(41) and (42) of Directive 2012/27/EU²³.
3. The eligible costs shall be the investment costs for the construction, expansion, refurbishment of one or more generation units which shall be an integral part of the efficient district heating and cooling system.
4. The aid intensity shall not exceed [x]% of the eligible costs. The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.
5. In the case of the use of waste heat, where the environmental investment can be identified, the aid intensity can be increased to [x]%.
6. The investment aid shall be granted to newly installed capacities not exceeding [x] MW.
7. The eligible costs for the distribution network shall be the total investment costs of the network or its refurbishment.
8. The aid intensity for the distribution network shall not exceed [x]% of the eligible costs. The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.
***OPTION:** The aid intensity may be increased to [x]% of the eligible costs for efficient district heating and cooling systems located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and to [x]% of the eligible costs for efficient district heating and cooling systems located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.*
9. No aid can be given to achieve compliance with legal standards applying to district heating and cooling systems.

Article 38

Aid for environmental studies

1. Aid for studies, including energy audits, directly linked to investments referred to in this Section shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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. No aid shall be granted to large enterprises for energy audits carried out under Article 8(4) of the Energy Efficiency Directive 2012/27/EU.

²³ OJ L 315, 14.11.2012, p. 1.

3. The eligible costs shall be the costs of the studies mentioned in paragraph 1.
4. The aid intensity shall not exceed 50% of the eligible costs.

CHAPTER IV

Final Provisions

Article 39

Repeal

Regulation (EC) No 800/2008 shall be repealed.

Any references to the repealed Regulation shall be construed as references to this Regulation.

Article 40

Transitional provisions

1. This Regulation shall apply to individual aid granted before its entry into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 11.
2. Any aid exempted from the notification requirement of Article 108(3) of the Treaty by virtue of any regulations previously in force shall be compatible with the internal market.
3. Any aid not exempted from the notification requirement of Article 108(3) of the Treaty by virtue of this or other regulations previously in force shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.
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, with the exception of regional aid schemes. The exemption of regional aid schemes shall expire at the date of expiry of the approved regional aid maps.
5. Member State shall comply with the provisions of Article 10(2) at the latest within two years after the entry into force of this Regulation.

Article 41

This Regulation shall enter into force on the *[twentieth]* day following that of its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2020. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President*

DRAFT

ANNEX I Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'ad hoc aid' means aid not awarded on the basis of an aid scheme;
2. 'agricultural product' means the products listed in Annex I to the Treaty, except fishery and aquaculture products listed in Annex I to Regulation (EU) No [COM(2011)416] on the common organisation of the markets in fishery and aquaculture products;
3. 'aid' means any measure fulfilling all the criteria laid down in Article 107(1) of the Treaty;
4. 'aid intensity' means the aid amount expressed as a percentage of the eligible costs;
5. 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings;
6. 'assisted areas' means areas designated in an approved regional aid map for the period 2014-2020 in application of Articles 107(3)(a) and (c) of the Treaty;
7. 'coal' means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal established by the United Nations Economic Commission for Europe¹;
8. 'date of grant of the aid' means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime;
9. 'disabled worker' means any person:
 - (a) recognised as disabled under national law; or
 - (b) having a recognised limitation which results from physical, mental or psychological impairment;
10. 'disadvantaged worker' means any person who:
 - (a) has not been in regular paid employment for the previous 6 months; or
 - (b) is between 15 and 24 years of age;
 - (c) has not attained an upper secondary educational or vocational qualification (ISCED 3) or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment; or
 - (d) is over the age of 50 years; or
 - (e) lives as a single adult with one or more dependents; or
 - (f) works in a sector or profession in a Member State where the gender imbalance is at least 25% higher than the average gender imbalance across all economic

¹ Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines, OJ L 336, 21.12.2010, p. 24, article 1 (a).

sectors in that Member State, and belongs to that underrepresented gender group; or

- (g) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;
11. 'employment directly created by an investment project' means employment concerning the activity to which the investment relates, including employment created following an increase in the utilisation rate of the capacity created by the investment;
 12. 'fiscal successor scheme' means a fiscal scheme which constitutes an amended version of a previously existing fiscal scheme and which replaces it.
 13. 'gross grant equivalent' or 'GGE' means the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs calculated at the moment of award of the aid on the basis of the discount rate applicable at that moment in time;
 14. 'individual aid' means aid granted to a specific undertaking and includes:
 - (a) ad hoc aid; and
 - (b) awards of aid on the basis of an aid scheme;
 15. 'intangible assets' means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge;
 16. 'large enterprises' means undertakings not fulfilling the criteria laid down in Annex I;
 17. 'marketing of agricultural products' means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose;
 18. 'net increase in the number of employees' means a net increase in the number of posts in the undertaking concerned compared with the average over a given period in time, and that any posts lost during that period must therefore be deducted and that the number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions;
 19. 'processing of agricultural products' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;

20. 'repayable advance' means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project;
21. 'severely disadvantaged worker' means any person who:
 - (a) has not been in regular paid employment for at least 24 months; or
 - (b) has not been in regular paid employment for at least 12 months and belongs to one of the categories (b) to (g) mentioned under the definition of 'disadvantaged worker'.
22. 'sheltered employment' means employment in an undertaking where at least 50% of workers are disabled;
23. 'small and medium-sized enterprises' or 'SMEs' means undertakings fulfilling the criteria laid down in Annex II;
24. 'start of works' means either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever comes first, excluding preparatory works;
25. 'tangible assets' means assets relating to land, buildings and plant, machinery and equipment;
26. 'transparent aid' means aid in respect of which it is possible to calculate precisely the gross grant equivalent ex ante without need to undertake a risk assessment;
27. 'undertaking in difficulty' means an undertaking that fulfills the following conditions:
[precise 'hard criteria' as currently set out in paragraph 10 of the Guidelines on State aid for rescuing and restructuring firms in difficulty or as set out in new guidelines on rescue and restructuring aid]
28. 'wage cost' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising:
 - (a) the gross wage, before tax;
 - (b) the compulsory contributions, such as social security charges over a defined period of time; and
 - (c) child care and parent care costs;

DEFINITIONS FOR REGIONAL AID

29. 'areas eligible for operating aid', means an outermost region referred to in Article 349 of the Treaty or a sparsely populated area, as determined in the approved regional aid map for the Member State concerned for the period 2014-2020;
30. 'basic broadband' means networks which are asymmetric digital subscriber lines (up to ADSL2+ networks), non-enhanced cable (e.g. DOCSIS 2.0), mobile networks of third generation (UMTS) and satellite systems;
31. 'NGA networks' means fibre-based access networks (FTTx), advanced upgraded cable networks and certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber;

32. 'backhaul broadband networks' means the intermediate link between the backbone network and the access network and carries data to and from the global network;
33. 'initial investment' means:
- an investment in tangible and intangible assets related to 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 not previously produced in the establishment or a fundamental change in the overall production process of an existing establishment; or
 - an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking;
34. 'initial investment in favour of new activity' means:
- an investment in tangible and intangible assets related to setting up of a new establishment, under the condition that the activity performed in the new establishment is not the same or a similar activity to the activity performed in an existing establishment in the same NUTS 3 region owned by the same undertaking or group of undertakings, diversification of the activity of an establishment, under the condition that the new activity is not a same or similar activity to the activity previously performed in the establishment;
 - acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not the same or a similar activity to the activity performed in the establishment prior to the acquisition;
35. 'same or a similar activity' means activities falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities²;
36. 'intangible assets' means assets acquired through a transfer of technology, such as patent rights, licences, know-how or unpatented technical knowledge and for the purposes of regional initial investment aid, they shall be amortizable assets, exclusively used in the establishment receiving the aid, purchased from parties with no legal, economic, or financial links at arm's length, which will be included in the assets of the undertaking and remain associated with the project receiving the aid for at least five years or three years in case of SMEs;
37. 'investment aid' means regional aid granted for an initial investment or an initial investment in favour of new activity;

² As laid down in 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). Regulation as amended by Commission Regulation (EC) No 973/2007 of 20 August 2007 amending certain EC Regulations on specific statistical domains implementing the statistical classification of economic activities NACE Revision 2 (OJ L 216, 21.8.2007, p. 10).

38. 'journey' means the movement of goods from the point of origin to the point of destination, including any intermediary sections or stages within or outside the Member State concerned, made using one or more means of transport;
39. 'large investment project' means an initial investment with eligible costs exceeding EUR 50 million, calculated at prices and exchange rates on the date of award of the aid. A large investment project shall be considered to be a single investment project when any initial investment started by the same beneficiary (at group level) in a period of three years from the date of start of works on another aided investment in the same NUTS 3 region.
40. 'means of transport' means railway transport, road freight transport, inland waterway transport, maritime transport, air transport, intermodal transport;
41. 'point of destination' means the place where the goods are unloaded;
42. 'point of origin' means the place where the goods are loaded for transport;
43. 'regional operating aid' means aid to reduce an undertaking's current expenditure that is not related to an initial investment and includes costs categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when awarding investment aid and may be based on actual costs but may be granted in the form of periodic instalments to cover expected costs (periodic lump sum payments);
44. 'scheme targeted at specific sectors of economic activity' means a scheme which covers only one or a limited number of activities within manufacturing or services.
45. 'steel sector' means all activities related to the production of one or more of the following products:
- (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 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, galvanized 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;
46. 'synthetic fibres sector' means:
- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
 - (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
 - (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.
47. 'tangible assets' means assets in the form of land, buildings and plant, machinery and equipment but for the purposes of regional aid in the transport sector, movable assets are not considered as eligible costs;
48. 'tourism activity' means the following activities in terms of NACE Rev. 2:
- (a) NACE 55: Accommodation;
 - (b) NACE 56: Food and beverage service activities;
 - (c) NACE 79: Travel agency, tour operator reservation service and related activities;
 - (d) NACE 90: Creative, arts and entertainment activities;
 - (e) NACE 91: Libraries, archives, museums and other cultural activities;
 - (f) NACE 93: Sports activities and amusement and recreation activities;
49. 'transport costs' means the costs of transport for hire or reward actually paid by the beneficiaries per journey, comprising:
- (a) freight charges, handling costs and temporary stocking costs, in so far as these costs relate to the journey;
 - (b) insurance costs applied to the cargo;
 - (c) taxes, duties or levies applied to the cargo and, if applicable, to the deadweight, both at point of origin and point of destination;
 - (d) safety and security control costs, surcharges for increased fuel costs;

50. 'transport' means inland transport by road, rail and waterways, air and maritime passenger and/or freight transport services for hire or reward but does not include transport infrastructure, notably airports and ports;
51. 'type of goods' means goods classified in accordance with Commission Regulation (EC) No 1304/2007 of 7 November 2007 amending Council Directive 95/64/EC, Council Regulation (EC) No 1172/98, Regulations (EC) No 91/2003 and (EC) No 1365/2006 of the European Parliament and of the Council with respect to the establishment of NST 2007 as the unique classification for transported goods in certain transport modes³;
52. 'airport infrastructure' means terminal buildings, runways, terminals, aprons, control tower and facilities that directly support them.

DEFINITIONS FOR AID TO SMES

53. 'debt instruments' means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period. Debt instruments may take the form of loans and other funding instruments which provide the lender/investor with a predominant component of fixed minimum remuneration and is at least partly secured;
54. 'entrusted entity' means a financial institution, such as the European Investment Bank and European Investment Fund, public law body and private law body with a public service mission, entrusted by a Member State to manage a financial instrument;
55. 'equity investment' means the provision of capital to an undertaking, invested directly or indirectly in return for total or partial ownership of that undertaking and where the equity investor may assume some management control of the undertaking and may share the undertaking's profits;
56. 'exit strategy' means a strategy for the liquidation of holdings by an investment vehicle or another investor, in accordance with a plan to achieve maximum return, including trade sale, write-offs, repayment of preference shares/loans, sale to another investment vehicle or another investor, sale to a financial institution and sale by public offering, including an initial public offering (IPO);
57. 'financial intermediary' means any financial intermediary, regardless of its form and ownership, including entities entrusted by the Member State for the purposes of implementing the risk finance measure, fund-of-funds, private equity investment funds and public investment funds;
58. 'first commercial sale' means the first sale by a company on a product or service market, excluding limited sales to test the market;
59. 'follow-on investment' means additional investment in a company subsequent to one or more previous investment rounds;
60. 'guarantee' means a written commitment to assume responsibility for all or part of a third party's newly originated quasi-equity or risk finance loan transactions;

³ OJ L 290, 8.11.2007, p. 14.

61. 'guarantee rate' means percentage loss coverage of each and every transaction of the guaranteed portfolio.
62. 'independent private investor' means a private investor who is independent from the SME in which it invests, including financial institutions, irrespectively of their ownership, to the extent that they bear the full risk in respect of their investment.;
63. 'investment' means one or more investment rounds in a company;
64. 'natural person' for the purpose of Articles 17 and 19 means a person who is not an undertaking for the purposes of Article 107(1) of the Treaty;
65. 'risk finance loans' means loans provided by a financial intermediary to the eligible SMEs on the condition that the intermediary contributes to the financing of such loans with its own resources in accordance with the ratios set out in Article 17(10) and that the financial intermediary is able to demonstrate on the basis of its previous 3-year financial statements that the loan portfolio supported under the risk finance measure includes a significant number of SMEs which, in the light of its internal rating criteria, would not have been financed without the measure.
66. 'scouting costs' mean costs related to the scouting of SMEs prior to their first commercial sale or which have been operating for less than five years following their first commercial sale on a market, where such costs do not lead to an investment. Scouting costs may not include the legal and administrative costs of the investment fund or its managers;
67. 'total financing' means one or more financing rounds in an eligible SME, including follow-on investments as covered by Article 19(5) of this Regulation;
68. 'quasi-equity investment' means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default. Quasi-equity investments can be structured as debt, unsecured and subordinated and in some cases convertible into equity, or as preferred equity;
69. 'replacement capital' means the purchase of existing shares in a company from an earlier investor or shareholder;
70. 'unlisted SME' means an SME which is not listed on the official list of a stock exchange and for the purposes of this Regulation, an SME listed on an alternative trading platform specialized in SMEs is considered unlisted.
71. 'organisational cooperation' means the development of joint business strategies or management structures, the provision of common services or services to facilitate cooperation, coordinated activities such as research or marketing, the support of networks and clusters, the improvement of accessibility and communication, the use of joint instruments to encourage entrepreneurship and trade with SMEs;
72. 'cooperation advisory services' means consulting, assistance and training for the exchange of knowledge and experiences and for improvement of cooperation;
73. 'cooperation support services' means the provision of office space, websites, data banks, libraries, market research, handbooks, working and model documents;

74. 'alternative trading platform' means a stock market or investment vehicle specialised in the exchange of SME shares by facilitating the matching between investors and target SMEs;

DEFINITIONS FOR AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION

75. 'arm's-length' means that the conditions of the transaction between the contracting parties do not differ from those which would be made between independent enterprises and contain no element of collusion. The setting up of an open, transparent and unconditional tender procedure for the transaction is considered as meeting the arm's length principle;
76. 'effective collaboration' means collaboration to exchange knowledge and/or technology, or to achieve a common objective based on the division of labour; the collaborating parties jointly define the scope of the research project and share the risk and the output of the collaboration. Subcontracting shall not be considered to be effective collaboration.
77. 'experimental development' means the acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills directly aiming at developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes and 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, but not where the primary objective is to develop markets. 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. In all other cases, prototypes and pilots should not be intended for commercial use.

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

78. 'fundamental research' means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view;
79. 'highly qualified personnel' means personnel with a tertiary education degree and at least 5 years of relevant professional experience which may also include doctoral training;
80. '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 for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts to complex systems, and may include the construction of prototypes in a laboratory environment and/or in an environment with simulated interfaces to existing systems as well as of small scale pilot lines to test and validate the manufacturing method performance, when necessary for the industrial research and notably for generic technology validation, insofar as such prototypes and pilot lines cannot be used commercially;
81. 'innovation advisory services' means consulting, assistance and training in the fields of knowledge transfer, acquisition, protection and trade in Intellectual Property Rights, licensing agreements and use of standards;
82. 'innovation support services' means the provision of office space, data banks, libraries, market research, use of laboratory, quality labelling, testing and certification;
83. 'innovative enterprise' means an enterprise that:
- (i) 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, or
 - (ii) its research and development costs represent at least 15% 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;
84. 'organisational innovation' means the implementation of a new organisational method in the undertaking's business practices, workplace organisation or external relations and excludes changes in business practices, workplace organisation or external relations 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, regular seasonal and other cyclical changes and trading of new or significantly improved products;
85. 'personnel costs' means researchers, technicians and other supporting staff to the extent employed on the research project;

86. 'process innovation' means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment and/or software but excluding minor changes or improvements, an increase 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, regular seasonal and other cyclical changes and trading of new or significantly improved products;

87. 'research and knowledge-dissemination organisation' means an entity (such as universities or research institutes, technology-transfer agencies, innovation intermediaries, research-oriented physical and/or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development, and/or to widely disseminate the results of such activities on a non-discriminatory and non-exclusive basis, by way of teaching, publication or knowledge transfer;

The entity may pursue economic activities as long as these contribute to its primary goal in that they are not prejudicial to the independence of the entity's primary activities, are intrinsically linked to the primary activities, represent only a non-essential proportion of the budget devoted to independent research, and are carried out on market terms.

The financing, the costs and the revenues of economic activities must be accounted for separately.

Undertakings that can exert influence upon such an entity, in the quality of, for example, shareholders or members, shall enjoy no preferential access to the research capacities of such an entity or to the research results generated by it;

88. 'research infrastructure' means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers major scientific equipment or set of instruments, knowledge-based resources such as collections, archives or structured scientific information, enabling Information and Communication Technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research. Such infrastructures may be 'single-sited' or 'distributed' (an organised network of resources)⁴;

⁴ In line with Article 2(a) of Council Regulation (EC) N° 723/2009 of 25.6.2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009, p. 1.

89. 'secondment' means temporary employment of personnel by a beneficiary with a right to return to the previous employer;

DEFINITIONS FOR AID FOR ENVIRONMENTAL PROTECTION

90. 'environmental protection' means any action designed to remedy or prevent damage to physical surroundings or natural resources by the beneficiary's own activities, to reduce risk of such damage or to lead to a more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy;
91. 'energy saving' means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption;
92. "energy infrastructures" means the energy infrastructures categories defined in Annex II of the draft Regulation of the European Parliament and of the Council 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 715/2009⁵;
93. 'Union standard' means:
- (e) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings; or
 - (f) the obligation under Directive 2008/1/EC of the European Parliament and of the Council⁶ to use the best available techniques as set out in the most recent relevant information published by the Commission pursuant to Article 17(2) of that Directive;
94. 'contaminated site' means a site where there is a confirmed presence, caused by man, of dangerous substances of such a level that they pose a significant risk to human health or the environment taking into account current and approved future use of the land (including forestry land). The environmental damage concerned covers damage to the quality of the soil or of surface water or groundwater.
95. 'cooperation mechanism' means a mechanism which fulfils the conditions of Article 6, 7 or 8 of Directive (EC) 2009/28 of the European Parliament and the Council on the promotion of the use of energy from renewable sources⁷;

⁵ <http://register.consilium.europa.eu/pdf/en/12/pe00/pe00075.en12.pdf>

⁶ OJ L 24, 29.1.2008, p. 8.

⁷ OJ L 140, 5.6.2009, p. 16.

96. 'renewable energy sources' means the following renewable non-fossil energy sources: wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;
97. 'biofuel' means liquid or gaseous fuel for transport produced from biomass;
98. 'sustainable biofuel' means a biofuel fulfilling the sustainability criteria set out in Article 17 of Directive (EC) 2009/28 of the European Parliament and the Council on the promotion of the use of energy from renewable sources⁸;
99. 'energy from renewable energy sources' means energy produced by plants using only renewable energy sources, 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, but excludes electricity produced as a result of storage systems;
100. 'cogeneration' means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
101. 'environmental tax' means a tax whose specific tax base has a clear negative effect on the environment or which seek to tax certain activities, goods or services so that the environmental costs may be included in their price and/or to enable producers and consumers to be oriented towards activities which better respect the environment;
102. 'Feed-in Premium' means a premium paid on top of the market price which exposes renewable energy producers to market prices;
103. 'Union minimum tax level' means the minimum level of taxation provided for in Union legislation; for energy products and electricity, the Union minimum tax level means the minimum level of taxation laid down in Annex I to Directive 2003/96/EC⁹;
104. 'tangible assets' means investments in land (including forestry land) which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment;
105. 'polluter pays principle' means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution, unless the person responsible for the pollution cannot be identified or cannot be held liable under Union or national legislation or may not be made to bear the costs of remediation. Pollution in this context is the damage caused by the polluter by directly or indirectly damaging the environment, or by creating conditions leading to such damage¹⁰ to physical surroundings or natural resources;
106. 'standards balancing responsibilities' means the balancing responsibilities normally applicable in a Member States to electricity producers, including to conventional electricity producers.

⁸ OJ L 140, 5.6.2009, p. 16.

⁹ OJ L 283, 31.10.2003, p. 51.

¹⁰ Council Recommendation of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters (OJ L 194, 25.7.1975, p. 1).

ANNEX II **SME Definition**

Article 1 ***Enterprise***

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

Article 2 ***Staff headcount and financial thresholds determining enterprise categories***

1. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Article 3 ***Types of enterprise taken into consideration in calculating staff numbers and financial amounts***

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25% or more of the capital or voting rights of another enterprise (downstream enterprise). However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25% threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:
 - (a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
 - (b) universities or non-profit research centres;

- (c) institutional investors, including regional development funds;
 - (d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.
3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:
- (a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
 - (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
 - (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
 - (d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25% or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.
5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25% or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Union rules.

Article 4

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.
2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods.
3. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

Article 5

Staff headcount

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

Article 6

Establishing the data of an enterprise

4. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.
5. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation. To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage

applies. To the data referred to in the first and second subparagraph are added 100% of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

6. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100% of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation. For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.
7. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

ANNEX III
Information regarding State aid exempt under the conditions of this Regulation

PART I

to be provided through the established Commission IT application as laid down in Article 10

| | | |
|---|---|---|
| Aid reference | <i>(to be completed by the Commission)</i> | |
| Member State | | |
| Member State reference number | | |
| Region | Name of the Region (NUTS¹¹) | Regional aid status¹² |
| Granting authority | Name | |
| | Postal address | |
| | Web address | |
| Title of the aid measure | | |
| National legal basis (Reference to the relevant national official publication) | | |
| Web link to the full text of the aid measure | | |
| Type of measure | Scheme | |
| | Ad hoc aid | Name of the beneficiary and the group¹³ it belongs to |
| Amendment of an existing aid scheme or ad hoc aid | | Commission aid reference |
| | Prolongation | |
| | Modification | |
| Duration¹⁴ | Scheme | dd/mm/yyyy to dd/mm/yyyy |
| Date of granting¹⁵ | Ad hoc aid | dd/mm/yyyy |
| Economic sector(s) concerned | All economic sectors eligible to receive aid | |

¹¹ NUTS - Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.

¹² Article 107(3)(a) TFEU (status 'A'), Article 107(3)(c) TFEU (status 'C'), unassisted areas i.e. areas not eligible for regional aid (status 'N').

¹³ An undertaking for the purposes of rules on competition laid down in the Treaty and for the purposes of this Regulation is any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The Court of Justice has ruled that entities which are controlled (on a legal or on a de facto basis) by the same entity should be considered as one undertaking.

¹⁴ Period during which the granting authority can commit itself to grant the aid.

¹⁵ Determined in line with recital 36 of the Regulation.

| | | | |
|-------------------------------------|--|--|--|
| | Limited to specific sectors: Please specify in accordance with NACE Rev. 2¹⁶ | | |
| Type of beneficiary | SME | | |
| | Large enterprises | | |
| Budget | Total annual amount of the budget planned under the scheme¹⁷ | National currency... (full amounts) | |
| | Overall amount of the <i>ad hoc</i> aid awarded to the undertaking¹⁸ | National currency... (full amounts) | |
| | For guarantees¹⁹ | National currency... (full amounts) | |
| Aid instrument (Art.5) | Grant/Interest rate subsidy | | |
| | Loan/Repayable advances | | |
| | Guarantee (where appropriate with a reference to the Commission decision²⁰) | | |
| | Tax advantage or tax exemption | | |
| | Provision of risk capital | | |
| | Other (please specify) | | |
| If co-financed by EU fund(s) | Name EU fund(s): | Amount of funding (as per EU fund) | National currency... (full amounts) |

¹⁶ NACE Rev. 2 - Statistical classification of Economic Activities in the European Community. Typically, the sector shall be specified at group level.

¹⁷ In case of an aid scheme: Indicate the annual overall amount of the budget planned under the scheme or the estimated tax loss per year for all aid instruments contained in the scheme.

¹⁸ In case of an *ad hoc* aid award: Indicate the overall aid amount/tax loss.

¹⁹ For guarantees, indicate the (maximum) amount of loans guaranteed.

²⁰ Where appropriate, reference to the Commission decision approving the methodology to calculate the gross grant equivalent, in line with article 5(2)(c) of the Regulation.

PART II

to be provided through the established Commission IT application as laid down in Article 10

Please indicate under which provision of the GBER the aid measure is implemented.

| Primary objective - General Objectives (list) | Objectives (list) | Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts) | SME - bonuses in % |
|--|---|---|---------------------------|
| Regional aid - investment aid⁴⁴ (Art.15) | Scheme | ...% | |
| | Ad hoc aid (Art. 15.1.) | ...% | |
| Regional aid - operating aid (Art. 16) | Transport costs of goods in eligible areas (Art.16.2(a)) | ...% | |
| | Additional costs in outermost regions (Art.16.2(b)) | ...% | |
| SME aid - investment aid (Art.17) | | ...% | |
| SME aid - SMEs' access to finance | Risk finance aid (Art. 17) | ...national currency | |
| | Aid for start-ups (Art. 20) | ...national currency | |
| SME aid - Aid to alternative trading platforms specialised in SMEs (Art.21) | | ...%; in case the aid measure takes the form of start-up aid: ... national currency | |
| SME aid - Aid for scouting costs (Art. 22) | | ...% | |
| Aid for research, development and innovation (Art. 23 – 26) | Aid for research and development projects (Art.23) | Fundamental research (Art. 21.2.a)) | ...% |
| | | Industrial research (Art.23.2.b)) | ...% |
| | | Experimental development (Art.23.2.c)) | ...% |

⁴⁴ In the case of *ad hoc* regional aid supplementing aid awarded under aid scheme(s), please indicate both the aid intensity granted under the scheme and the intensity of the *ad hoc* aid.

| | | | |
|---|--|----------------------|--|
| | Aid for the establishment of research infrastructures (Art.24) | ...% | |
| | Innovation aid for SMEs (Art.25) | ...% | |
| | Aid for research and development in the agricultural and fisheries sectors (Art.26) | ...% | |
| Training aid (Art.27) | | ...% | |
| Employment aid - Aid for disadvantaged and disabled workers (Art. 28–29) | Aid for the recruitment of disadvantaged workers or for the employment of disabled workers in the form of wage subsidies (Art.28) | ...% | |
| | Aid for compensating the additional costs of employing disabled workers (Art.29) | ...% | |
| Aid for Environmental protection (Art. 30– 36) | Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards (Art.30) | ...% | |
| | Aid for early adaptation to future Community standards for SMEs (Art.31) | ...% | |
| | Environmental investment aid for energy saving measures (Art. 3230) | ...% | |
| | Environmental investment aid for high-efficiency cogeneration (Art.33) | ...% | |
| | Environmental investment aid for the promotion of energy from renewable energy sources (Art. 34) | ...national currency | |
| | Aid in the form of reductions in environmental taxes (Art. 35) | ...% | |
| | Investment aid for remediation of contaminated sites (Art. 36) | ...% | |
| | Investment aid for energy efficient district heating and cooling (Art.37) | ...% | |
| | Aid for environmental studies(Art.38) | ...% | |

Part III

**FORM FOR THE PUBLICATION OF INFORMATION ON INDIVIDUAL AID AWARDS UNDER ARTICLE 10
AND FOR THE TRANSMISSION OF THIS INFORMATION TO THE COMMISSION UNDER ARTICLE 12**

| | | |
|---|---|---|
| Aid reference | | |
| Member State | | |
| Granting authority | Name | |
| | Web address | |
| Name of the beneficiary, VAT number and the group it belongs to | | |
| Type of beneficiary | <i>SME</i> | |
| | <i>Large enterprise</i> | |
| Region in which the beneficiary is located | Name of the Region (NUTS⁴⁵) | Regional aid status⁴⁶ |
| | | |
| Economic sector(s) in which the beneficiary is active | <i>NACE Rev. 2 and short description</i> | |
| Aid element, expressed as full amount in national currency⁴⁷ | | |
| Aid instrument⁴⁸ | Grant/Interest rate subsidy | |
| | Loan/Repayable advances/Reimbursable grant | |
| | Guarantee (where appropriate with a reference to the Commission decision ⁴⁹) | |
| | Tax advantage or tax exemption | |
| | Risk finance | |
| | Other (please specify) | |
| Date of granting | dd/mm/yyyy | |
| Objective of the aid | | |
| legal basis, including the implementing provisions and, where appropriate, | | |

⁴⁵ NUTS - Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.

⁴⁶ Article 107(3)(a) TFEU (status 'A'), Article 107(3)(c) TFEU (status 'C'), unassisted areas i.e. areas not eligible for regional aid (status 'N').

⁴⁷ Gross grant equivalent, or for risk finance schemes, the amount of the public investment

⁴⁸ If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument

⁴⁹ Where appropriate, reference to the Commission decision approving the methodology to calculate the gross grant equivalent.

| | |
|---|--|
| the scheme under which the aid is granted | |
|---|--|

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ANNEX IV

Application form in order for incentive effect (as specified in Article 6)

1. Information about the aid beneficiary:
 - name, registered address of main seat, main sector of activity (NACE Code),
 - declaration that firm is not in difficulty as defined under this Regulation];
 - declaration specifying aid (both de minimis and State aid) already received for another projects in the last 3 years;
 - declaration specifying aid received or to be received for the same project by other granting authorities.
2. Information about the project/activity to be supported:
 - Description of the project.
 - Description of the expected positive effects for the area concerned (e.g. number of jobs created or safeguarded, R&D&I activities, training activities, creation of a cluster)
 - relevant legal basis (national, Union or both)
 - planned start-end date of the project
 - location(s) of the project
3. Information about the financing of the project:
 - investments and other costs linked to it
 - total eligible costs
 - aid amount needed to execute the project/activity
 - aid intensity
4. Information about the need for aid and its expected impact:

Short explanation of the need for aid and its impact on the investment decision or location decision. Alternative investment or location in absence of aid shall be indicated.

ANNEX V
Provisions for the Member State's single website

- (1) Member States should organise their single State aid website, on which the information laid down in Articles 10(1)(b) and 2, should be published in a way to allow easy access to the information.
- (2) Access to the website should be provided by a search tool or a search user interface ('the search function'). By that search function, all individual information should be searchable and in any combination thereof. The result of the search function should also be available for download, in at least two different formats according to common standards, to allow the information for further processing in a spread sheet, e.g. XLS, CSV, or through other means using web techniques, e.g. XML, HTML.
- (3) Access to the website should be allowed to any interest party without restrictions. No prior user registration shall be required to access the website.