(b) all the conditions laid down in this Article are fulfilled, with the exception of the conditions set out in paragraphs 3, 4, 8, 12 and/or 13;

(c) for risk finance measures providing risk finance investments to eligible undertakings in the form of equity, quasi-equity or loans, the measure shall leverage additional financing from independent private investors at the level of the financial intermediaries or the SMEs, so as to achieve an aggregate private participation rate reaching at least 60 % of the risk finance provided to the SMEs.

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

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

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

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

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

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

(19) the following Article 21a is inserted:

"Article 21a

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

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

2. Eligible undertakings are those that fulfill the criteria laid down in Article 21(3). The total risk finance investment provided under Article 21 and under this Article to each eligible undertaking shall not exceed the maximum amount laid down in Article 21(8).

3. Where the independent private investor provides risk finance indirectly through a financial intermediary, the eligible investment shall take the form of the acquisition of shares or participations in the financial intermediary, which shall in turn provide risk finance investments to eligible undertakings in accordance with Article 21(5) to (8). No tax incentive may be granted in respect of the services provided by the financial intermediary or its managers.

4. Where the independent private investor provides risk finance directly to the eligible undertaking, only the acquisition of newly issued full-risk ordinary shares issued by an eligible undertaking shall constitute an eligible investment. Those shares shall be kept for at least three years. Replacement capital shall only be covered under the conditions laid down in Article 21(7). Concerning the possible forms of tax incentives, losses arising upon disposal of the shares may be set-off against income tax. In the case of tax relief on dividends, any dividend received in respect of qualifying shares may be (fully or partially) exempt from income tax. Any profit on the sale of qualifying shares may be either (fully or partially) exempt from capital gains tax or the tax liability with respect to such profit may be deferred if reinvested in new qualifying shares within one year.

5. Where the independent private investor provides risk finance directly to the eligible undertaking, in order to ensure an adequate participation of such independent private investor, in accordance with Article 21(12), the tax relief, counted as the cumulative maximum tax relief from all tax incentives combined, shall not surpass the following maximum thresholds:

(a) 50 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 21(3), point (a);

(b) 35 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 21(3), point (b);

(c) 20 % of the eligible investment carried out by the independent private investor into the eligible undertakings referred to in Article 21(3), point (c) or of a follow-on eligible investment into an eligible undertaking after the eligibility period referred to in Article 21(3), point (b).

The tax relief thresholds for the direct investments mentioned in the first subparagraph, may be increased up to 65% under point (a), up to 50 % under point (b) and up to 35 % under point (c) for investments that are either: made in assisted areas designated in an approved regional aid map in force at the time of provision of the risk finance investment in application of Article 107(3), point (a), of the Treaty; or that receive support on the basis of the Member State's recovery and resilience plan as approved by the Council of the European Union; or receive support from the European Defence Fund in accordance with Regulation (EU) 2021/697 or under the Union Space Programme in accordance with Regulation (EU) 2021/696; or that receive support from Union funds implemented under shared management covered by Regulation (EU) 1303/2013 or Regulation (EU) 2021/1060 or Regulation (EU) 2021/2115.

6. Where the independent private investor provides risk finance indirectly through a financial intermediary, and in accordance with Article 21(12), the tax relief, counted as the cumulative maximum tax relief from all tax incentives combined, shall not surpass 30% of the eligible investment carried out by the independent private investor into an eligible undertaking referred

to in Article 21(3). This tax relief threshold may be increased up to 50% for investments that are either: made in assisted areas designated in an approved regional aid map in force at the time of provision of the risk finance investment in application of Article 107(3), point (a) of the Treaty; or that receive support on the basis of the Member State's recovery and resilience plan as approved by the Council of the European Union; or receive support from the European Defence Fund in accordance with Regulation (EU) 2021/697 or under the Union Space Programme in accordance with Regulation (EU) 2021/696; or that receive support from Union funds implemented under shared management covered by Regulation (EU) 1303/2013 or Regulation (EU) 2021/1060 or Regulation (EU) 2021/2115.";

(20) Article 22 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Eligible undertakings shall be any unlisted small enterprise up to five years following its registration, that fulfils the following cumulative conditions:

(a) it has not taken over the activity of another undertaking, unless the turnover of the overtaken activity accounts for less than 10% of the turnover of the eligible undertaking in the financial year preceding the take-over;

(b) it has not yet distributed profits;

(c) it has not acquired another undertaking or has not been formed through a merger, unless the turnover of the acquired undertaking accounts for less than 10% of the turnover of the eligible undertaking in the financial year preceding the acquisition or the turnover of the merged undertaking formed through a merger is less than 10% higher than the combined turnover that the merging undertakings had in the financial year preceding the merger.

For eligible undertakings that are not subject to registration, the five year eligibility period shall start from either the moment when the undertaking starts its economic activity or the moment it becomes liable to tax with regard to its economic activity, whichever is earlier.

By way of derogation from the first subparagraph, point (c), undertakings formed through a merger between undertakings eligible for aid under this Article shall also be considered eligible undertakings up to five years from the date of registration of the oldest of the merging undertakings.";

(b) paragraph 3 is replaced by the following:

"3. Start-up aid shall take the form of:

(a) loans with interest rates which are not conform with market conditions, with a duration of 10 years and up to a maximum nominal amount of EUR 1.1 million, or EUR 1.65 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty, or EUR 2.2 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty. For loans with a duration comprised between five years and 10 years the maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. For loans with a duration of less than five

years, the maximum amount shall be the same as for loans with a duration of five years;

(b) guarantees with premiums which are not conform with market conditions, with a duration of 10 years and up to maximum EUR 1.65 million of amount guaranteed, or EUR 2.48 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty, or EUR 3.3 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty. For guarantees with a duration comprised between five years and 10 years the maximum amount guaranteed amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the guarantee. For guarantees with a duration of less than five years, the maximum amount guaranteed shall be the same as for guarantees with a duration of five years. The guarantee shall not exceed 80 % of the underlying loan;

(c) grants, including equity or quasi equity investment, interests rate and guarantee premium reductions up to EUR 0,5 million gross grant equivalent or EUR 0,75 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty, or EUR 1 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty;

(d) tax incentives to eligible undertakings up to EUR 0,5 million gross grant equivalent or EUR 0,75 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty, or EUR 1 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty.";

(c) the following paragraph 6 is added:

"6. Where a start-up aid scheme is implemented through one or more financial intermediaries, the conditions applying to financial intermediaries laid down in Article 21(10), (14), (15), (16) and (17), shall apply.";

(d) the following paragraph 7 is added:

"7. In addition to the amounts in paragraphs 3, 4 and 5, start-up aid schemes can take the form of either a transfer of intellectual property (IP) or a grant of the related access rights, either free of charge or below market value. The transfer or the grant shall be from a research and knowledge-dissemination organisation, within the meaning of Article 2(82), that has developed the underlying IP through its independent own or collaborative research and development activity, to an eligible undertaking within the meaning paragraph 2. The transfer or the grant shall fulfill all of the following conditions:

(a) the purpose of the transfer of IP or the grant of related access rights is to bring a new product or service to the market; and

(b) the value of the IP is set at its market price, which is the case if it has been set according to one of the following methods:

(i) the amount has been established by means of an open, transparent and non-discriminatory competitive procedure;

(ii) an independent expert valuation confirms that the amount is at least equal to the market price;

(iii) in cases where the eligible undertaking has a right of first refusal as regards the IP generated in collaboration with the research and knowledge-dissemination organisation, where the research and knowledge-dissemination organisation exercises a reciprocal right to solicit more economically advantageous offers from third parties so that the collaborating eligible undertaking has to match its offer accordingly.

The value of any contribution, both financial and non-financial, of the eligible undertaking to the costs of the research and knowledge-dissemination organisation's activities that resulted in the IP concerned may be deducted from the value of the IP referred to in point (b).

(c) The aid amount of the IP transfer or the grant of the related access rights under this paragraph shall not exceed EUR 1 million. The aid amount corresponds to the value of the IP referred to in point (b), less the above-mentioned deduction referred to in the last sentence of point (b) and less any remuneration due from the beneficiary for that IP. The value of the IP referred to in point (b) can exceed EUR 1 million, in which case such additional amount may be covered by the eligible undertaking with own funds or other means.";

(21) in Article 23(2), the second subparagraph is replaced by the following:

"The aid measure may take the form of tax incentives to independent private investors that are natural persons in respect of their risk finance investments made through an alternative trading platform into undertakings eligible under the conditions laid down in Article 21a(2) and (5).";

(22) Article 24 is amended as follows:

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

"2. The eligible costs shall be:

(a) the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings pursuant to Articles 21, 21a and 22;

(b) the costs for investment research, as defined in Article 36(1) of Commission Delegated Regulation 2017/565*, in an individual eligible undertaking pursuant to Articles 21, 21a and 22, provided this research is publicly disseminated, and, if it has been disseminated to clients of the investment research provider before public dissemination, is disseminated publicly in the same form and no later than three months after the first dissemination to clients.

3. Investment research referred to in paragraph 2, point (b), of this Article shall fulfil the requirements laid down in Articles 36 and 37 of Delegated Regulation (EU) 2017/565.

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* Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).";

(b) the following paragraph 4 is inserted:

"4. The aid intensity shall not exceed 50 % of the eligible costs.";

(23) Article 25 is amended as follows:

(a) in paragraph 3, point (e) is replaced by the following:

"(e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project; without prejudice to Article 7(1), third sentence, such R&D project costs may alternatively be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to 20 %, applied to total eligible R&D project costs referred to in point (a) to (d). In this case, the R&D project costs used for the calculation of the indirect costs shall be established on the basis of normal accounting practices and shall comprise only eligible R&D project costs referred to in points (a) to (d).";

(b) paragraph 6 is replaced by the following:

"6. The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80 % of the eligible costs in line with the following points (a) to (d), where points (b), (c) and (d) must not be combined with each other:

(a) by 10 percentage points for medium-sized enterprises and by 20 percentage point for small enterprises;

(b) by 15 percentage points if one of the following conditions is fulfilled:

(i) the project involves effective collaboration:

– between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or

– between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results;

(ii) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software;

(iii) the beneficiary commits to, on a timely basis, make available licences for research results of aided R&D projects, which are protected by intellectual property rights, at a market price and on non-exclusive and non-discriminatory basis for use by interested parties in the EEA;

(iv) the R&D project is carried out in an assisted region fulfilling the conditions of Article 107(3)(a) of the Treaty;

(c) by 5 percentage points if the R&D project is carried out in an assisted region fulfilling the conditions of Article 107(3)(c) of the Treaty;

(d) by 25 percentage points if the R&D project:

(i) has been selected by a Member State following an open call to form part of a project jointly designed by at least three Member States or contracting parties to the EEA Agreement; and

(ii) involves effective collaboration between undertakings in at least two Member States or contracting parties to the EEA Agreement when the beneficiary is a SME, or in at least three Member States or contracting parties to the EEA Agreement when the beneficiary is a large enterprise; and

(iii) if at least one the two following conditions is fulfilled:

– the results of the R&D project are widely disseminated in at least three Member States or contracting parties to the EEA Agreement through conferences, publication, open access repositories, or free or open source software; or

– the beneficiary commits to, on a timely basis, make available licences for research results of aided R&D projects, which are protected by intellectual property rights, at a market price and on non-exclusive and non-discriminatory basis for use by interested parties in the EEA.";

(24) the following Article 25e is inserted:

"Article 25e

Aid involved in the co-funding of projects supported by the European Defence Fund or the European Defence Industrial Development Programme

1. Aid provided to co-fund a research and development project funded by the European Defence Fund or the European Defence Industrial Development Programme and which is evaluated, ranked and selected in line with the European Defence Fund or the European Defence Industrial Development Programme rules, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs of the aided project shall be those defined as eligible under the European Defence Fund or the European Defence Industrial Development Programme rules.

3. The total public funding provided can reach up to 100% of the eligible costs of the project, meaning that the costs of the project not covered by Union funding can be covered by State aid.

4. In case the aid intensity received by the beneficiary exceeds the maximum aid intensity the beneficiary could have received under Article 25, paragraphs 5 to 7, the beneficiary must pay a market price to the granting authority to use for non-defence applications the intellectual property rights or prototypes resulting from the project. In any event, the maximum amount to be paid to the granting authority for this use shall not exceed the difference between the aid received by the beneficiary and the maximum amount of aid the beneficiary could have received applying the maximum aid intensity allowed for that beneficiary under Article 25, paragraphs 5 to 7.";

(25) Article 26 is amended as follows:

(a) paragraph 6 is replaced by the following:

"The aid intensity shall not exceed 50 % of the eligible costs. The aid intensity may be increased up to 60% subject to at least two Member States providing the public funding, or for a research infrastructure evaluated and selected at Union level."

(26) the following Article 26a is inserted:

"*Article 26a*

Investment aid for testing and experimentation infrastructures

1. Aid for the construction or upgrade of testing and experimentation infrastructures shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The price charged for the operation or use of the infrastructure shall correspond to a market price or reflect their costs plus a reasonable margin in the absence of a market price.

3. Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

4. The eligible costs shall be the investment costs in intangible and tangible assets.

5. The aid intensity shall not exceed 25 % of the eligible costs.

6. The aid intensity may be increased up to a maximum aid intensity of 40%, 50% and 60% of the eligible investment costs of large, medium and small sized enterprises respectively as follows:

a) by 10 percentage points for medium sized enterprises and 20 percentage points for small enterprises;

b) by additional 10 percentage points for cross-border testing and experimentation infrastructures which are subject to at least two Member States providing the public funding or for testing and experimentation infrastructures evaluated and selected at Union level;

c) by additional 5 percentage points for testing and experimentation infrastructures of which at least 80% of annual capacity is allocated to SMEs.";

(27) Article 27 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Investment aid can be granted to the owner of the innovation cluster. Operating aid can be granted to the operator of the innovation cluster. The operator, when different from the owner, can either have a legal personality or be a consortium of undertakings without a separate legal

personality. In all instances separate accounting for the costs and revenues of each activity (ownership, operation and use of the cluster) has to be kept according to the applicable accounting standards by each undertaking.";

(b) paragraph 4 is replaced by the following:

"4. The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs including a reasonable margin.";

(28) Article 28 is amended as follows:

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

"(c) costs for innovation advisory and support services, including those services provided by research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters.";

(b) paragraph 4 is replaced by the following:

"4. In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100 % of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 220 000 per undertaking within any three year period.";

(29) Article 36 is amended as follows:

(a) the heading and paragraph 1 are replaced by the following:

"*Article 36*

Investment aid for environmental protection, including decarbonisation

1. Investment aid for environmental protection, including aid for the reduction and removal of greenhouse gas emissions , shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.";

(b) the following paragraph 1a is inserted:

"1a. This Article shall not apply to measures for which more specific rules are laid down in Articles 36a, 36b and 38 to 48. This Article shall also not apply to investments in equipment, machinery and industrial production facilities using fossil fuels, including those using natural gas. This is without prejudice to the possibility to grant aid for the installation of add-on components improving the level of environmental protection of existing equipment, machinery and industrial production facilities, in which case the investment shall result neither in the expansion of the production capacity nor higher consumption of fossil fuels.";

(c) the following paragraph 1b is inserted:

"1b. This Article shall also apply to investments in equipment and machinery using, and infrastructure transporting, hydrogen to the extent that the hydrogen used or transported

qualifies as renewable hydrogen. It shall also apply to investments in equipment and machinery using hydrogen-derived fuels the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.

This Article shall also apply to aid for investments in installations, equipment and machinery producing or using, and dedicated infrastructure referred to in Article 2, point (130) last paragraph, transporting hydrogen produced from electricity and which does not qualify as renewable hydrogen, to the extent that it can be demonstrated that the electricity-based hydrogen produced, used or transported achieves life-cycle greenhouse gas emissions savings of at least 70 % relative to a fossil fuel comparator of 94g CO2eq/MJ (2.256 tCO2eq/tH2). To determine the life-cycle greenhouse gas emissions savings under this subparagraph, the greenhouse gas emissions linked to the production of electricity used to produce hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid.

In the cases referred to in the first and second subparagraphs, only hydrogen fulfilling the conditions set out in those subparagraphs shall be used, transported or – where relevant – produced throughout the lifetime of the investment. The Member State shall obtain a commitment to that effect.";

(d) paragraph 2 is amended as follows:

(i) points (a) and (b) are replaced by the following:

"(a) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary, beyond Union standards in force, irrespective of the presence of mandatory national standards that are more stringent than the Union standards; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130) last paragraph, for hydrogen within the meaning of paragraph 1b, waste heat or CO_2 or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO_2, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain; or

(b) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary in the abence of Union standards; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130) last paragraph for hydrogen within the meaning of paragraph 1b, waste heat or CO_2 or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO_2, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain; or";

(ii) the following point (c) is added:

"(c) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary to comply with Union standards that have been adopted but are not yet in force; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130), last paragraph,

for hydrogen within the meaning of paragraph 1b, waste heat or CO_2 or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO_2, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain.";

(e) the following paragraph 2a and 2b are inserted:

"2a. Investments in CO_2 capture and transport shall fulfil the following cumulative conditions:

(a) the CO_2 capture and/or transport, including individual elements of the CCS or CCU chain, shall be integrated into a complete CCS and/or CCU chain;

(b) the net present value ('NPV') of the investment project over its lifetime shall be negative. For the purpose of calculating the project's NPV, the avoided costs of CO_2 emissions shall be taken into account;

(c) the eligible costs shall be exclusively the additional investment costs stemming from capturing the CO_2 from a CO_2-emitting installation (industrial installation or power plant) or directly from ambient air as well as from buffer storage and transportation of captured CO_2 emissions.

2b. When the aid aims at reducing or avoiding direct emissions, the aid must not merely displace the emissions concerned from one sector to another and must overall reduce the targeted emissions; in particular, when the aid aims at reducing greenhouse gas emissions, the aid must not merely displace these emissions from one sector to another and must reduce them overall.";

(f) paragraphs 3 to 6 are replaced by the following:

"3. Aid shall not be granted where investments are undertaken to ensure that undertakings merely comply with the Union standards in force. Aid enabling undertakings to comply with Union standards that have been adopted but not yet in force may be granted under this Article provided that the investment for which the aid is granted is implemented and finalised at least 18 months before the date of entry into force of the standard concerned.

4. The eligible costs shall be the extra investment costs determined by comparing the costs of the investment to those of a counterfactual scenario that would occur in the absence of the aid, as follows:

(a) where the counterfactual scenario consists in carrying out a less environmentally-friendly investment that corresponds to normal commercial practice in the sector or for the activity concerned, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the costs of the less environmentally-friendly investment;

(b) where the counterfactual scenario consists in carrying out the same investment at a later point in time, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the costs of the later investment, discounted to the point in time when the aided investment would be undertaken;

(c) where the counterfactual scenario consists in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the

investments in the maintenance, repair and modernisation of the existing installations and equipment, discounted to the point in time when the aided investment would be undertaken;

(d) in the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in Net Present Value between the leasing of equipment for which State aid is granted and the leasing of the less environmentally-friendly equipment that would be leased in the absence of the aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract.

In all situations listed under points (a) to (d), the counterfactual scenario shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual scenario shall be credible in the light of legal requirements, market conditions and incentives generated by the EU ETS system.

Where the investment for which State aid is granted consists in the installation of an add-on component to an already existing facility, for which there is no less environmentally-friendly counterfactual investment, the eligible costs shall be the total investment costs.

Where the investment for which State aid is granted consists in the construction of dedicated infrastructure referred to in Article 2, point (130), last paragraph, for hydrogen within the meaning of paragraph 1b, waste heat or CO_2, that is necessary to enable the increase in the level of environmental protection as referred to in paragraphs 2 and 2a, the eligible costs shall be the total investment costs. Costs for the construction or upgrade of storage facilities, with the exception of storage facilities for renewable hydrogen and hydrogen covered by paragraph 1b second sub-paragraph, shall not be eligible.

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

5. The aid intensity shall not exceed 40 % of the eligible costs. Where the investment, with the exception of those which rely on the use of biomass, results in a 100 % reduction of the direct greenhouse gas emissions, the aid intensity may reach 50 %.

6. In case of investments relating to CCS and/or CCU, the aid intensity shall not exceed 30 % of the eligible costs.";

(g) the following paragraphs 9, 10 and 11 are inserted:

"9. The aid intensity may reach 100 % of the investment costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;

(b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;

(d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure, for example the aid requested per unit of environmental protection to be delivered.

10. Alternatively to paragraphs 4 to 9, the aid amount shall not exceed the difference between the investment costs directly linked to the achievement of a higher level of environmental protection and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections and verified *ex post* through a claw-back mechanism.

11. By way of derogation from paragraphs 4(a) to 4(d), 9 and 10, the eligible costs may be determined without the identification of the counterfactual scenario and in the absence of a competitive bidding process. In that case, the eligible costs shall be the investment costs directly linked to the achievement of a higher level of environmental protection and the applicable aid intensities and bonuses set out in paragraphs 5, 6, 7 and 8 are reduced by 50%.";

(30) Article 36a is replaced by the following:

"*Article 36a*

Investment aid for recharging or refuelling infrastructure

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

2. This Article shall only cover aid granted for recharging or refuelling infrastructures that supply vehicles, mobile terminal equipment or mobile groundhandling equipment with electricity or hydrogen. For aided refuelling infrastructure supplying hydrogen, the Member State shall obtain from the beneficiary a commitment that by 2035 at the latest, the refuelling infrastructure will solely supply renewable hydrogen. This Article does not apply to aid for investments relating to recharging and refuelling infrastructure in ports.

3. The eligible costs shall be the costs of the construction, installation, upgrade or extension of recharging or refuelling infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself and related technical equipment, the installation of or upgrades to electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, as well as civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.

The eligible costs may also cover the investment costs of on-site production of renewable electricity or renewable hydrogen, and the investment costs of storage units for storing renewable electricity or hydrogen. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.

4. Aid under this Article shall be granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;

(b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;

(d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure for example aid requested per recharging or refuelling point.

5. Where the aid is granted in a competitive bidding process complying with the conditions of paragraph 4, the aid intensity may reach up to 100 % of the eligible costs.

6. By derogation from paragraph 4, aid may be granted in the absence of a competitive bidding process when the aid is granted based on an aid scheme. In this case, the aid intensity shall not exceed 20% of the eligible costs. The aid intensity may be increased by 20 percentage points for medium-sized enterprises and by 30 percentage points for small enterprises. The aid intensity may also be increased by 15 percentage points for investments located in assisted areas designated in an approved regional aid map in force at the time of provision of the aid in application of in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas designated in an approved regional aid map in force at the time of provision of the aid in application of Article 107(3), point (c), of the Treaty.

7. The aid granted to any one undertaking shall not exceed 40 % of the total budget of the scheme concerned.

8. Where the recharging or refuelling infrastructure is open for access by users other than the aid beneficiary or beneficiaries, aid shall only be granted for the construction, installation, upgrade or extension of recharging or refuelling infrastructure accessible to the public and providing non-discriminatory access to users, including in relation to tariffs, authentication and payment methods and other terms and conditions of use. The fees charged to users other than the aid beneficiary or beneficiaries for using the recharging or refuelling infrastructure shall correspond to market prices.

9. Operators of recharging or refuelling infrastructure that offer or allow contract-based payments on their infrastructure shall not discriminate between mobility service providers, for example by applying preferential access conditions, or through price differentiation without an objective justification.

10. The necessity of aid to invest in recharging or refuelling infrastructure of the same category as the one to be supported with aid (for example, for recharging infrastructure: normal or high power) shall be established through an *ex ante* open public consultation or an independent market study, which are no older than one year at the moment of the entry into force of the aid

measure. In particular, it shall be established that no such investment is likely to take place on commercial terms within three years from the entry into force of the aid measure.

The obligation to conduct an *ex ante* open public consultation or an independent market study laid down in the first subparagraph shall not apply to aid for the construction, installation, upgrade or extension of recharging or refuelling infrastructure that is not accessible to the public.

11. By way of derogation from paragraph 10, the necessity of aid for recharging or refuelling infrastructure for road vehicles shall be presumed where vehicles powered exclusively by electricity (for recharging infrastructures) or vehicles powered at least partially by hydrogen (for refuelling infrastructures) represent respectively less than 3 % of the total number of vehicles of the same category registered in the Member State concerned. For the purpose of this paragraph, passenger cars and light-duty commercial vehicles shall be considered as being part of the same category of vehicles.

12. Any concession or other entrustment to a third party to operate the supported recharging or refuelling infrastructure shall be assigned on a competitive, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

13. Where aid is granted for the deployment of new recharging infrastructure that allows for a transfer of electricity with a power output of less than or equal to 22 kW, the infrastructure must be capable of supporting smart recharging functionalities.";

(31) the following Article 36b is inserted:

"*Article 36b*

Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles

1. Investment aid for the acquisition of clean vehicles or zero-emission vehicles for road, railway, inland waterway and maritime transport and for the retrofitting of vehicles other than aircraft to qualify as clean vehicles or as zero-emission vehicles shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall be granted for the purchase or the leasing for a duration of at least 12 months of clean vehicles powered at least partially by electricity or by hydrogen or zero-emission vehicles and for the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles.

3. The eligible costs shall be the following:

(a) for investments consisting in the purchase of clean vehicles or zero-emission vehicles, the extra costs of purchasing the clean vehicle or the zero-emission vehicle. Those shall be calculated as the difference between the investment costs of purchasing the clean vehicle or the zero-emission vehicle and the investment costs of purchasing a vehicle of the same category that complies with applicable Union standards already in force and would have been acquired without the aid;

(b) for investments consisting in the leasing of clean vehicles or zero-emission vehicles, the extra costs of leasing the clean vehicle or the zero-emission vehicle. Those shall be calculated as the difference between the net present value of leasing the clean vehicle or the zero-emission vehicle and the net present value of leasing a vehicle of the same category that complies with applicable Union standards already in force and would have been leased without the aid. For the purposes of determining the eligible costs, the operating costs linked to the operation of the vehicle, including energy costs, insurance costs and maintenance costs, shall not be taken into account, irrespective of whether they are included in the leasing contract;

(c) for investments consisting in the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles, the costs of the investment in the retrofitting.

4. Aid under this Article shall be granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;

(b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;

(d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure for example aid requested per clean or zero-emission vehicle.

5. Where the aid is granted in a competitive bidding process complying with the conditions of paragraph 4, the aid intensity shall not exceed:

(a) 100 % of the eligible costs for the purchase or the leasing of zero-emission vehicles or the retrofitting of vehicles allowing them to qualify as zero-emission vehicles;

(b) 80 % of the eligible costs for the purchase or the leasing of clean vehicles, or of the retrofitting of vehicles allowing them to qualify as clean vehicles.

6. By derogation from paragraph 4, aid may be granted outside of a competitive bidding process when the aid is granted based on an aid scheme.

In those cases, the aid intensity shall not exceed 20% of the eligible cost. The aid intensity may be increased by 10 percentage points for zero-emission vehicles and by 20 percentage points for medium-sized enterprises or by 30 percentage points for small enterprises.

7. By derogation from paragraph 4, aid may also be granted outside of a competitive bidding process when the aid is granted for undertakings that have been awarded a public service contract for the provision of public passenger transport services by land, rail or water following an open, transparent and non-discriminatory public tender only in relation to the acquisition of

clean vehicles or zero-emission vehicles used for the provision of the public passenger transport services subject to the public service contract.

In this case, the aid intensity shall not exceed 40% of the eligible cost. The aid intensity may be increased by 10 percentage points for zero-emission vehicles.";

(32) Article 37 is deleted.

(33) Article 38 is amended as follows:

(a) the title is replaced by the following:

"Article 38

Investment aid for energy efficiency measures other than in buildings";

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

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

2. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalised at least 18 months before the standard enters into force.";

(c) the following paragraphs 2a and 2b are inserted:

"2a. This Article shall not apply to aid for cogeneration and aid for district heating and/or cooling.

2b. Aid for the installation of energy equipment fired by fossil fuels, including natural gas, shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.";

(d) paragraph 3 is replaced by the following:

"3. The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined by comparing the costs of the investment to those of the counterfactual scenario that would occur in the absence of the aid, as follows:

(a) where the counterfactual scenario consists in carrying out a less energy-efficient investment that corresponds to normal commercial practice in the sector or for the activity concerned, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the costs of the less energy-efficient investment.

(b) where the counterfactual scenario consists in carrying out the same investment at a later point in time, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the costs

of the later investment, discounted to the point in time when the aided investment would be undertaken;

(c) where the counterfactual scenario consists in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the investment in the maintenance, repair and modernisation of the existing installation and equipment, discounted to the point in time when the aided investment would be undertaken;

(d) In the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in Net Present Value between the leasing of the equipment for which State aid is granted and the leasing of the less energy-efficient equipment that would be leased in the absence of aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract;

In all situations listed under points (a) to (d), the counterfactual shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual shall be credible in the light of legal requirements, market conditions and incentives generated by the EU ETS system.

Where the investment consists in a clearly identifiable investment solely aimed at improving energy efficiency, for which there is no less energy efficient counterfactual investment, the eligible costs shall be the total investment costs.

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

(e) paragraph 3a is deleted;

(f) paragraph 7 is replaced by the following:

"7. The aid intensity may reach 100 % of the total investment costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;

(b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;

(d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure, for example aid requested per unit of energy saved or of energy efficiency gained.

Those criteria shall not account for less than 70 % of the weighting of all the selection criteria.";

(g) the following paragraph 8 is inserted:

"8. By way of derogation from paragraphs 3(a) to 3(d) and 7, the eligible costs may be determined without the identification of the counterfactual scenario and in the absence of a competitive bidding process. In that case, the eligible costs shall be the total investment costs directly linked to the achievement of a higher level of environmental protection and the applicable aid intensities and bonuses set out in paragraphs 4, 5 and 6 are reduced by 50%.";

(34) the following Article 38a is inserted:

"Article 38a

Investment aid for energy efficiency measures in buildings

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

2. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force.

3. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force. Where the relevant Union standards are minimum energy performance standards, the aid must be granted before the standards become mandatory for the undertaking concerned. In that case, the Member State must ensure that beneficiaries provide a precise renovation plan and timetable demonstrating that the aided renovation is at least sufficient to ensure compliance with the minimum energy performance standards. Where the relevant Union standards are different from minimum energy performance standards, the investment must be implemented and finalised at least 18 months before the Union standard enters into force.

4. This Article shall not apply to aid for cogeneration and aid for district heating and/or cooling.

5. The eligible costs shall be the total investment costs. The costs not directly linked to the achievement of a higher level of energy efficiency in the building shall not be eligible.

6. The aid shall induce an improvement in the energy performance of the building measured in primary energy of at least: (i) 20 % compared to the situation prior to the investment in the case of renovation of existing buildings, or (ii) 10 % compared to the situation prior to the investment in the case of renovation measures concerning the installation or replacement of just one type of building elements as defined in Article 2(9) of Directive 2010/31/EU and such targeted renovation measures do not represent more than 30 % of the part of the scheme's budget dedicated to energy efficiency measures, or (iii) 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures implementing Directive 2010/31/EU in the case of new buildings. The initial primary energy demand and the estimated improvement shall be established by reference to an Energy Performance Certificate as defined in Article 2(12) of Directive 2010/31/EU.

7. The aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

(a) the installation of integrated on-site equipment generating electricity, heating or cooling from renewable energy sources, including but not limited to photovoltaic panels and heat pumps;

(b) the installation of equipment for the storage of the energy generated by the on-site renewable energy installations. The storage equipment shall absorb at least 75 % of its energy from a directly connected renewable energy generation installation, on an annual basis;

(c) the connection to an energy efficient district heating and/or cooling system and related equipment;

(d) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the parking facilities are located either inside the building or are physically adjacent to the building;

(e) the installation of equipment for the digitalisation of the building in particular to increase its smart-readiness, including passive in-house wiring or structured cabling for data networks and the ancillary part of the broadband infrastructure on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property;

(f) investments in green roofs and equipment for the retention and use of rain water.

In case of any such combined works, as set out in points (a) to (f), the entire investment cost of the various installations and equipment shall constitute the eligible costs. The costs not directly linked to the achievement of a higher level of energy or environmental performance shall not be eligible.

8. The aid may be granted either to the building owner(s) or the tenant(s), depending on who is commissioning the energy efficiency measure.

9. Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building.

10. Aid for the installation of energy equipment fired by fossil fuels, including natural gas, shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

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

12. By way of derogation from paragraph 11, where the investment consists in the installation or replacement of just one type of building element as defined in Article 2(9) of Directive 2010/31/EU, the aid intensity shall not exceed 25 %.

13. By way of derogation from paragraphs 11 and 12, where aid for investments in buildings undertaken to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force, the aid intensity must not exceed 15 % of the eligible costs where the investment consists in the

installation or replacement of just one type of building element as defined in Article 2(9) of Directive 2010/31/EU and 20 % in all other cases.

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

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

16. The aid intensity may be increased by 15 percentage points for aid granted to improve the energy efficiency of existing buildings, where the aid induces an improvement in the energy performance of the building measured in primary energy of at least 40 % compared to the situation prior to the investment. This increase in aid intensity does not apply where the investment does not improve the energy performance of the building beyond the level imposed by minimum energy performance standards qualifying as Union standards entering into force within less than 18 months from the moment the investment is implemented and finalised.";

(35) the following Article 38b is inserted:

"Article 38b

Aid for the facilitation of energy performance contracting

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

2. Aid may be granted under this Article for the facilitation of energy performance contracting within the meaning of Article 2, point (27), of Directive 2012/27/EU.

3. Eligible for aid under this Article are SMEs and small mid-caps that are providers of energy performance improvement measures, and which are the final beneficiaries of the aid.

4. The aid shall take the form of a senior loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consist in a financial product aimed at financing the provider (for example, factoring or forfaiting).

5. The duration of the loan or guarantee to the provider of energy efficiency improvement measures shall not exceed 10 years.

6. Where the aid takes the form of a senior loan, the co-investment by commercial providers of debt funding shall not be lower than 30 % of the value of the underlying porfolio of energy performance contracts, and the repayment by the provider of energy efficiency improvement measures shall at least be equal to the nominal amount of the loan.

7. Where the aid takes the form of a guarantee, the guarantee shall not exceed 80 % of the underlying loan's principal and losses are sustained proportionally and under the same conditions by the credit institution and the State. The guaranteed amount shall decrease proportionally, in such a way that the guarantee never covers more than 80 % of the outstanding loan.

8. The nominal amount of total outstanding financing provided per beneficiary shall not exceed EUR 30 million.";

(36) Article 39 is amended as follows:

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

"2. Eligible for aid under this Article are investments improving the energy efficiency of buildings.

2a. The aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

(a) the installation of integrated on-site equipment generating electricity, heating or cooling from renewable energy sources, including but not limited to photovoltaic panels and heat pumps;

(b) the installation of equipment for the storage of the energy generated by the on-site renewable energy installations. The storage equipment shall absorb at least 75 % of its energy from a directly connected renewable energy generation installation, on an annual basis;

(c) investments in the connection to an energy efficient district heating and/or cooling system and related equipment;

(d) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the car park is located either inside the building or is physically adjacent to the building;

(e) the installation of equipment for the digitalisation of the building, in particular to increase its smart-readiness. Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and the ancillary part of the broadband infrastructure on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property;

(f) investments in green roofs and equipment for the retention and use of rain water.

3. The eligible costs shall be the total costs of the energy efficiency project, except for buildings referred to in paragraph 2a, where the eligible costs shall be the total costs of the energy efficiency project as well as the investment cost of the various pieces of equipment listed in paragraph 2a.";

(b) in paragraph 5, the first and second sentences are replaced by the following:

"5. The energy efficiency fund or other financial intermediary shall grant loans or guarantees to the eligible energy efficiency projects. The nominal value of the loan or the amount guaranteed shall not exceed EUR 25 million per final beneficiary and project, except in the case of the combined investments referred to in paragraph 2a, where it shall not exceed EUR 30 million.";

(c) paragraph 7 is replaced by the following:

"7. The energy efficiency aid shall leverage additional investment from independent private investors as defined in Article 2 point (72) reaching at minimum 30 % of the total financing provided to an energy efficiency project. When the aid is provided by an energy efficiency fund, the leverage of such private investment can be done at the level of the energy efficiency fund and/or at the level of the energy efficiency projects, so as to achieve an aggregate minimum 30 % of the total financing provided to an energy efficiency project.";

(d) in paragraph 8, point (f) is replaced by the following:

"(f) The energy efficiency fund or financial intermediary shall be established in accordance with the applicable laws and the Member State shall ensure a due diligence process in order to verify that commercially sound investment strategy will be applied for the purpose of implementing the energy efficiency aid measure.";

(e) paragraph 10 is replaced by the following:

"10. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force.";

(f) The following paragraphs 11, 12, 13 and 14 are inserted:

"11. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force. Where the relevant Union standards are minimum energy performance standards, the aid must be granted before the standards become mandatory for the undertaking concerned. In that case, the Member State must ensure that beneficiaries provide a precise renovation plan and timetable demonstrating that the aided renovation is at least sufficient to ensure compliance with the minimum energy performance standards. Where the relevant Union standards are different from minimum energy performance standards, the investment must be implemented and finalised at least 18 months before the standard enters into force.

12. Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building.

13. Aid for the installation of energy equipment fired by fossil fuels, including natural gas, shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

14. The Member State may assign the implementation of the aid measure to an entrusted entity.";

(37) Article 40 is deleted;

(38) Article 41 is amended as follows:

(a) the title and paragraph 1 are replaced by the following:

"*Article 41*

Investment aid for the promotion of energy from renewable sources, of renewable hydrogen and of high-efficiency cogeneration

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

(b) the following paragraph 1a is inserted:

"1a. Investment aid for electricity storage projects under this Article shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that it is granted to combined renewable and storage projects (behind-the-meter), where both elements are components of a single investment or where storage is connected to an existing renewable generation installation. The storage component shall absorb at least 75 % of its energy from directly connected renewable energy generation installation, on an annual basis. All investment components (generation and storage) are considered to constitute a single integrated project for verification of compliance with the thresholds set out in Article 4. The same rules shall apply to thermal storage directly connected to a renewable energy production installation.";

(c) paragraphs 2, 3 and 4 are replaced by the following:

"2. Investment aid for the production and storage of biofuels, bioliquids, biogas (including biomethane) and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Annex IX to that Directive. The storage component shall obtain at least 75 % of its fuel content from directly connected biofuels, bioliquids, biogas (including biomethane) and biomass fuels production installations, on an annual basis. All investment components (production and storage) are considered to constitute a single integrated project for verification of compliance with the thresholds set out in Article 4.

3. Investment aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable hydrogen. For renewable hydrogen projects consisting of an electrolyser and one or more renewable generation units behind a single grid connection point, the capacity of the electrolyser shall not exceed the combined capacity of the renewable generation units. The investment aid may cover dedicated infrastructure for the transmission or distribution of renewable hydrogen, as well as storage facilities for renewable hydrogen.

4. Investment aid for high-efficiency cogeneration units shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that they provide overall primary energy savings compared to separate production of heat and electricity as provided for by Directive 2012/27/EU or any subsequent legislation replacing this act in full or in part. Investment aid for electricity and thermal storage projects directly connected to high-efficiency cogeneration based on renewable energy sources shall be exempted from the notification requirement of Article 108(3) of the Treaty under the conditions laid down in paragraph 1a.";

(d) the following paragraph 4a is inserted:

"4a. Investment aid for high-efficiency cogeneration shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it is not for fossil fuel fired cogeneration

installations, with the exception of natural gas where compliance with the 2030 and 2050 climate targets is ensured in line with section 4.30 of Annex 1 to Commission Delegated Regulation (EU) 2022/1214.

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* Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ L 188, 15.7.2022, p. 1).";

(e) paragraphs 5, 6 and 7 are replaced by the following:

"5. The investment aid shall be granted in respect of newly installed or refurbished capacities. The aid amount shall be independent from the output.

6. The eligible costs shall be the total investment cost.

7. The aid intensity shall not exceed:

(a) 45 % of the eligible costs for investments in the production of renewable energy sources, including heat pumps compliant with Annex VII of Directive 2018/2001, renewable hydrogen and high-efficiency cogeneration based on renewable energy sources;

(b) 30 % of the eligible costs for any other investment covered by this Article.";

(f) paragraph 9 is deleted;

(g) paragraph 10 is replaced by the following:

"10. The aid intensity may reach 100 % of the eligible costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;

(b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be excluded;

(d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid per unit of energy capacity from renewable sources or high efficiency-cogeneration.";

(39) Article 42 is amended as follows:

(a) paragraphs 1 to 7 are replaced by the following:

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

2. Aid shall be granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition;

(b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be excluded;

(d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid per unit of electricity output or capacity from renewable sources.

The bidding process shall be open to all generators producing electricity from renewable energy sources on a non-discriminatory basis.

3. The bidding process can be limited to specific technologies where:

(a) a measure aims specifically to support demonstration projects;

(b) a measure aims to address not only decarbonisation but also air quality or other pollution;

(c) a Member State identifies reasons to expect that eligible sectors or innovative technologies have the potential to make an important and cost-effective contribution to environmental protection and deep decarbonisation in the longer term;

(d) a measure is required to achieve diversification necessary to avoid exacerbating issues related to network stability;

(e) a more selective approach can be expected to lead to lower costs of achieving environmental protection (for example through reduced system integration costs as a result of diversification, including between renewables, which could also include demand response and/or storage), and/or result in less distortion of competition.

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

4. Where the bidding process is limited to one or more innovative technologies, the aid granted to these technologies shall not exceed 5 % of the planned new electricity capacity from renewable energy sources per year in total.

5. Aid shall be granted as a premium in addition to the market price or in the form of a contract for difference whereby the generators sell their electricity directly in the market.

6. Aid beneficiaries shall sell their electricity directly in the market and be subject to standard balancing responsibilities. Beneficiaries may outsource balancing responsibilities to other undertakings on their behalf, such as aggregators. Furthermore, aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative.

7. Small-scale renewable electricity installations may benefit from aid in the form of direct price support that covers the full costs of operation and from an exemption from the requirement to sell the electricity produced on the market, in line with Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale for the purposes of this paragraph if their capacity is below the applicable threshold under Article 5(2)(b) or Article 5(4) of Regulation (EU) 2019/943.";

(b) paragraphs 8, 9 and 10 are deleted;

(c) paragraph 11 is replaced by the following:

"11. Aid shall only be granted over the lifetime of the project.";

(40) Article 43 is amended as follows:

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

"*Article 43*

Operating aid for the promotion of energy from renewable sources and of renewable hydrogen in small projects and renewable energy communities

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

2. For the purposes of this Article small projects are defined as follows:

(i) for electricity generation or storage – projects below or equal to 1 MW of installed capacity;

(ii) for electricity consumption – projects with a maximum demand below or equal to 1 MW;

(iii) for heat generation and gas production technologies – projects below or equal to 1 MW of installed capacity or equivalent;

(iv) for the production of renewable hydrogen – projects below or equal to 3 MW of installed capacity or equivalent;

(v) for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels – projects below or equal to an installed capacity of 50,000 tonnes/year;

(vi) for 100 % SME-owned projects and demonstration projects – projects below or equal to 6 MW installed capacity or maximum demand;

(vii) for projects 100 % owned by micro or small enterprises for wind generation only – projects below or equal to 18 MW of installed capacity.";

(b) the following paragraphs 2a and 2b are inserted:

"2a. Aid to renewable energy communities shall be exempted from the notification requirement of Article 108(3) of the Treaty only for projects with an installed capacity or maximum demand below or equal to 6 MW from all renewable sources except for wind energy only, for which aid shall be granted to installations with an installed capacity below or equal to 18 MW.

2b. Operating aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable hydrogen.";

(c) paragraph 3 is replaced by the following:

"3. Operating aid for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Annex IX to that Directive."

(d) paragraph 4 is deleted;

(e) paragraph 5, 6 and 7 are replaced by the following:

"5. Aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the net extra cost ('funding gap') necessary to meet the objective of the aid measure, compared to the counterfactual scenario in the absence of aid. A detailed assessment of the net extra cost is not required if the aid amounts are determined through a competitive bidding process, because the latter provides a reliable estimate of the minimum aid required by potential beneficiaries.

6. Aid shall only be granted over the lifetime of the project.

7. Aid shall be granted as a premium in addition to the market price or in the form of a contract for difference whereby the generators sell their electricity directly in the market.";

(f) the following paragraphs 8 and 9 are inserted:

"8. Aid beneficiaries shall be subject to standard balancing responsibilities. Beneficiaries may outsource balancing responsibilities to other undertakings on their behalf, such as aggregators. Furthermore, aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative.

9. Small-scale renewable electricity installations and demonstration projects may benefit from aid in the form of direct price support that covers the full costs of operation and from an exemption from the requirement to sell the electricity produced on the market, in line with

Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale for the purposes of this paragraph if their capacity is below the applicable threshold under Article 5(2)(b) or Article 5(4) of Regulation (EU) 2019/943.";

(41) Article 44 is replaced by the following:

"*Article 44*

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

1. Aid schemes in the form of reductions in taxes fulfilling the conditions of Council Directive 2003/96/EC shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The beneficiaries of the tax reduction shall be selected on the basis of transparent and objective criteria.

3. The beneficiaries of the tax reduction shall pay at least the minimum level of taxation laid down in Annex I to Council Directive 2003/96/EC, except for reductions:

(a) granted on the basis of Article 15(1)(a) of Council Directive 2003/96/EC, for taxable products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources;

(b) granted on the basis of the first, second, fourth and fifth indent of Article 15(1)(b) of Council Directive 2003/96/EC, for electricity (i) of solar, wind, wave, tidal or geothermal origin, (ii) of hydraulic origin produced in hydroelectric installations, (iii) generated from methane emitted by abandoned coalmines, and (iv) generated from fuel cells;

(c) granted on the basis of the third indent of Article 15(1)(b) of Council Directive 2003/96/EC, for electricity generated from biomass or from products produced from biomass, to the extent that biomass is compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts;

(d) granted on the basis of Article 15(1)(d) of Council Directive 2003/96/EC, for electricty produced from combined heat and power generation, provided that cogeneration by the combined generators is high-efficiency cogeneration as defined in Article 2(34) of Directive 2012/27/EU;

(e) granted on the basis of Article 15(1)(l) of Council Directive 2003/96/EC, for products falling within CN code 2705 used for heating purposes;

(f) granted on the basis of Article 16(1) of Council Directive 2003/96/EC.

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

5. Tax reductions granted on the basis of Article 16(1) of Council Directive 2003/96/EC shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts, and are made from the feedstock listed in Annex IX to that Directive.";

(42) the following Article 44a is inserted:

"*Article 44a*

Aid in the form of reductions in environmental taxes or parafiscal levies

1. Aid schemes in the form of reductions in environmental taxes or parafiscal levies shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled. This Article shall not apply to reductions in taxes or levies on energy products and electricity, defined in Article 2 of Council Directive 2003/96/EC.

2. Aid in the form of reductions in environmental taxes or parafiscal levies shall be compatible only where the reduction allows to achieve a higher level of environmental protection by including in the scope of the environmental tax or levy undertakings that would not be able to pursue their economic activities without the reduction.

3. Only those undertakings that would not be able to pursue their economic activities without the reduction are eligible for aid. For the purposes of this Article, this is considered the case for undertakings whose production costs would substantially increase due to the environmental tax or parafiscal levy without the reduction and which are not able to pass that increase on to customers. The increase in the production costs shall be calculated as a proportion of the gross value added for each sector or category of beneficiaries.

4. The beneficiaries shall be selected on the basis of transparent, non-discriminatory and objective criteria. The aid shall be granted in the same way to all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the objectives of the aid measure.

5. The gross grant equivalent of the aid shall not exceed 80 % of the nominal rate of the tax or levy.

6. Aid schemes in the form of reductions in environmental taxes or parafiscal levies may be based on a reduction of the applicable tax rate or on the payment of a fixed compensation amount or on a combination of these mechanisms.";

(43) Articles 45 and 46 are replaced by the following:

"*Article 45*

Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation

1. Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of

nature-based solutions for climate change adaptation and mitigation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid under this Article maybe granted for the following activities :

(a) the remediation of environmental damage, including damage to the quality of the soil, surface water or groundwater or to the marine environment;

(b) the rehabilitation of natural habitats and ecosystems from a degraded state;

(c) the protection or restoration of biodiversity or of ecosystems to contribute to achieving the good condition of ecosystems or to protect ecosystems that are already in good condition;

(d) the implementation of nature-based solutions for climate change adaptation and mitigation.

3. This Article shall not apply to aid to make good the damage caused by natural disasters, such as earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.

4. This Article shall also not apply to aid for remediation or rehabilitation following the closure of power plants and mining or extraction operations.

5. Without prejudice to Directive 2004/35/EC of the European Parliament and of the Council* or other relevant Union rules on liability for environmental damage, where the entity or undertaking liable for the environmental damage under the law applicable in each Member State is identified, that entity or undertaking shall finance the works necessary to prevent and correct environmental degradation and contamination in accordance with the 'polluter pays' principle, and no aid shall be granted for the works that the entity or undertaking would be legally required to conduct. The Member State shall take all necessary measures, including legal action, to identify the liable entity or undertaking at the origin of the environmental damage and make it bear the relevant costs. Where the entity or undertaking liable under the applicable law cannot be identified or made to bear the costs of remediating the environmental damage it has caused, in particular because the liable undertaking has ceased to legally exist and no other undertaking can be regarded as its legal or economic successor, or where there is insufficient financial security to meet the costs of remediation, aid may be granted to support the remediation or rehabilitation works. Aid shall not be granted for the implementation of compensatory measures referred to in Article 6(4) of Council Directive 92/43/EEC**. Aid may be granted under this Article to cover the extra costs necessary to increase the scope or ambition of those measures, beyond the legal obligations under Article 6(4) of Directive 92/43/EEC.

6. For investments in the remediation of environmental damage or the rehabilitation of natural habitats and ecosystems, the eligible costs shall be the costs incurred for the remediation or rehabilitation works, less the increase in the value of the land or property.

7. Evaluations of the increase in the value of the land or property resulting from remediation or rehabilitation shall be carried out by an independent qualified expert.

8. For investments in the protection or restoration of biodiversity and in the implementation of nature-based solutions for climate change adaptation and mitigation, the eligible costs shall be

the total costs of the works resulting in the contribution to protecting or restoring biodiversity or in the implementation of nature-based solutions for climate change adaptation and mitigation.

9. The aid intensity shall not exceed:

(a) 100 % of the eligible costs for investments in the remediation of environmental damage or the rehabilitation of natural habitats and ecosystems;

(b) 70 % of the eligible costs for investments in the protection or restoration of biodiversity and in nature-based solutions for climate change adaptation and mitigation.

10. The aid intensity for investments in the protection or restoration of biodiversity and in the implementation of nature-based solutions for climate change adaptation and mitigation may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

Article 46

Investment aid for energy efficient district heating and/or cooling

1. Investment aid for the construction, extension or upgrade of energy efficient district heating and/or cooling systems, which includes the construction, extension or the upgrade of heating or cooling generation installations and/or thermal storage solutions and/or the distribution network, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall only be granted for the construction, extension or upgrade of district heating and/or cooling systems that are or are to become energy efficient as defined in Article 2, point (41), of Directive 2012/27/EU. Where the system does not yet become fully energy efficient as a result of the supported works on the distribution network, the additional upgrades required to fullfil the conditions for falling under the definition of energy efficient district heating and/or cooling shall, for heating and/or cooling generation facilities which are subject to the aid, commence within three years from the start of the supported works on the distribution network.

3. Aid may be granted for energy generation based on renewable sources, including heat pumps compliant with Annex VII of Directive 2018/2001, waste heat or high-efficient cogeneration, as well as thermal storage solutions. Aid for energy generation based on waste may be based either on waste that meets the definition of renewable energy sources or waste used to fuel installations that meet the definition of high-efficiency cogeneration. Waste used as input fuel must not circumvent the waste hierarchy principle as defined in Article 4, point (1), of Directive 2008/98/EC.

4. Aid shall not be granted for the construction or upgrade of fossil fuel based generation facilities, except for natural gas. Aid for the construction or upgrade of natural gas based generation facilities may be granted only where compliance with the 2030 and 2050 climate targets is ensured in line with Annex 1, section 4.30 of Delegated Regulation (EU) 2022/1214.

5. Aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels may only be granted where all of the following conditions are met:

(a) the distribution network is or becomes suitable for the transmission of heating or cooling generated from renewable energy sources and/or waste heat;

(b) the upgrade does not result in an increased generation of energy from fossil fuels except for natural gas. In case of an upgrade to the storage or network distributing heating and cooling generated from natural gas, in as far as the upgrade results in an increased generation of energy from natural gas, those generation facilities need to be in compliance with the 2030 and 2050 climate targets, in line with Annex 1, section 4.31 of Delegated Regulation (EU) 2022/1214.

6. The eligible costs shall be the investment costs related to the construction or upgrade of an energy efficient district heating and/or cooling system.

7. The aid intensity shall not exceed 30 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

8. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, waste heat, or a combination of the two, including renewable cogeneration.

9. As an alternative to paragraph 3, the aid intensity may reach up to 100 % of the funding gap. The aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the funding gap as defined under point (118). A detailed assessment of the net extra cost is not required if the aid amounts are determined through a competitive bidding process, because the latter provides a reliable estimate of the minimum aid required by potential beneficiaries.

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* Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

** Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).";

(44) Article 47 is amended as follows:

(a) the title and paragraphs 1 to 8 are replaced by the following:

"*Article 47*

Investment aid for resource efficiency and for supporting the transition towards a circular economy

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

2. The aid shall be granted for the following types of investments:

(a) investments improving resource efficiency through one or both of the following:

(i) a net reduction in the resources consumed in the production of a given quantity of output compared to a pre-existing production process used by the beneficiary or to alternative projects or activities listed under paragraph 7. The resources consumed shall include all material resources consumed, with the exception of energy, and the reduction shall be determined by measuring or estimating consumption before and after the implementation of the aid measure, taking into account any adjustment for external conditions that may affect resource consumption;

(ii) the replacement of primary raw materials or feedstock with secondary (re-used or recovered, including recycled) raw materials or feedstock;

(b) investments for the prevention and reduction of waste generation, preparing for re-use, decontaminating and recycling of waste generated by the beneficiary or investments for the preparing for re-use, decontaminating and recycling of waste generated by third parties and which would otherwise be unused, disposed of, or be treated based on a treatment operation that is situated lower in the priority order of the waste hierarchy referred to in Article 4, point (1) of Directive 2008/98/EC or in a less resource-efficient manner, or would lead to a lower quality of recycling output;

(c) investments for the collection, sorting, decontamination, pre-treatment and treatment of other products, materials or substances generated by the beneficiary or by third parties and which would otherwise be unused or used in a less resource-efficient manner;

(d) investments for the separate collection and sorting of waste with a view to its preparing for re-use or recycling.

3. Aid for waste disposal and waste recovery operations to generate energy shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

4. The aid shall not relieve undertakings that generate waste from any costs or obligations relating to the treatment of waste for which they are liable under Union or national law, including under extended producer responsibility schemes, or from costs that should be considered as normal costs for an undertaking.

5. The aid must not incentivise the generation of waste or the increased use of resources.

6. Investments related to technologies constituting an already profitable established commercial practice throughout the Union shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

7. The eligible costs shall be the extra investment costs determined by comparing the total investment costs of the project with those of a less environmentally-friendly project or activity that shall be one of the following:

(a) a counterfactual scenario consisting in a comparable investment that would credibly be realised in a new or pre-existing production process without aid and which does not achieve the same level of resource efficiency;

(b) a counterfactual scenario consisting in treating the waste based on a treatment operation that is situated lower in the priority order of the waste hierarchy referred to

in Article 4, point (1) of Directive 2008/98/EC or treating the waste, other products, materials or substances in a less resource-efficient way;

(c) a counterfactual scenario consisting in a comparable investment in a conventional production process using primary raw material, or feedstock, if the obtained secondary (re-used or recovered) product is technically and economically substitutable with the primary product.

In all situations listed under points (a) and (c), the counterfactual scenario shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual scenario shall be credible in the light of legal requirements, market conditions and incentives.

Where the investment consists in installing an add-on component to an already existing facility, for which there is no less environmentally-friendly equivalent, or where the aid applicant can demonstrate that no investment would take place in the absence of aid, the eligible costs shall be the total investment costs.

8. The aid intensity shall not exceed 40 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.";

(b) paragraph 10 is replaced by the following:

"10. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalised at least 18 months before the standard enters into force.";

(45) Articles 48 and 49 are replaced by the following:

"*Article 48*

Investment aid for energy infrastructure

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

2. Aid for energy infrastructure that is partly or fully exempted from third party access or tariff regulation in accordance with internal energy market legislation shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

3. Aid for investments in electricity and gas storage projects shall not be exempt from the notification requirement under this Article.

4. Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty where the infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases, or used for the transport of more than 50% hydrogen and renewable gases.

5. The eligible costs shall be the total investment costs.

6. The aid intensity may reach up to 100 % of the funding gap. The aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the funding gap as defined under point (118). A detailed assessment of the net extra cost is not required if the aid amounts are determined through a competitive bidding process, because it provides a reliable estimate of the minimum aid required by potential beneficiaries.

Article 49

Aid for studies and consultancy services on environmental protection and energy matters

1. Aid for studies or consultancy services, including energy audits, directly linked to investments eligible for aid under this Section shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Where the entire study or consultancy service concerns investments eligible for aid under this Section, the eligible costs shall be the costs of the study or consultancy service. Where only part of the study or consultancy service concerns investments eligible for aid under this Section, the eligible costs shall be the costs of the part of the study or consultancy service relating to those investments.

2a. Aid shall be granted irrespective of whether the findings of the study or the consultancy service are followed by an investment eligible for aid under this Section.

3. The aid intensity shall not exceed 60 % of the eligible costs.

4. The aid intensity may be increased by 20 percentage points for studies or consultancy services undertaken on behalf of small undertakings and by 10 percentage points for studies or consultancy services undertaken on behalf of medium-sized undertakings.

5. Aid shall not be granted for energy audits carried out to comply with Directive 2012/27/EU, unless the energy audit is carried out in addition to the mandatory energy audit under that Directive.";

(46) Articles 52 and 52a are replaced by the following:

"Article 52

Aid for fixed broadband networks

1. Aid for fixed broadband network deployment shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be all costs for the construction, management and operation of a fixed broadband network. The maximum aid amount for a project shall be established on the basis of a competitive selection process as set out in paragraph 6, point (a). Where an investment is carried out in accordance with paragraph 6, point (b), without a competitive selection process, the aid amount shall not exceed the difference between the eligible costs and the normal

operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante on the basis of reasonable projections and verified ex post through a claw-back mechanism. The reasonable projection of the measure requires that all costs and all revenues, which are expected to be incurred over the economic lifetime of the investment, shall be taken into account.

3. The following alternative types of investment are eligible:

(a) fixed broadband network deployment to connect households and socioeconomic drivers in areas where there is no network providing a speed of at least 100 Mbps download under peak-time conditions (threshold speed) existing or credibly planned to be deployed within the relevant time horizon. This shall be verified by mapping and public consultation in accordance with paragraph 4;

(b) fixed broadband network deployment to connect socio-economic drivers in areas where there is only one network providing a speed of at least 100 Mbps download under peak time conditions but below 300 Mbps download under peak-time conditions (threshold speed) existing or credibly planned to be deployed within the relevant time horizon. This shall be verified by mapping and public consultation in accordance with paragraph 4.

4. Areas where there is at least one network that can be upgraded to provide a speed of at least 1 Gbps download under peak time conditions are not eligible for interventions under sub-paragraphs (a) and (b). A network is considered to be upgradable to provide a speed of at least 1Gbps download under peak time conditions if it can provide this speed with a marginal investment, such as an upgrade of active equipment, without significant investment in broadband infrastructure.

5. The mapping and public consultation for the purposes of paragraph 3 shall meet the following requirements cumulatively:

(a) the mapping shall identify the geographic target areas planned to be covered under the State intervention and shall take into account all existing fixed broadband networks. The mapping shall be performed:

(i) for fixed wired networks, at address level on the basis of premises passed;

(ii) for fixed wireless access networks, at address level on the basis of premises passed or on the basis of maximum 100x100 metre grids.

Where a network deployment includes, at the same time, the deployment of an access network and a limited deployment of the necessary ancillary backhaul network to enable the functioning of the access network, a mapping of backhaul networks is not required.

All the elements of the methodology and the underlying technical criteria used to map the target areas must be made publicly available. Mapping shall always be verified through a public consultation;

(b) the public consultation shall be carried out by the competent public authority through the publication of the main characteristics of the planned State intervention and the list of geographic target areas identified in the mapping exercise in accordance with point

(a). That information must be made available on a publicly accessible website at regional and national level. The public consultation shall invite interested parties to comment on the planned State intervention and to submit substantiated information in accordance with point (a) regarding their networks providing the threshold speeds set out in paragraph 3 existing or credibly planned to be deployed in the target area within the relevant time horizon. The public consultation shall last at least 30 days.

6. The intervention shall bring a significant improvement (step change) compared to the networks existing or credibly planned to be deployed within the relevant time horizon, as identified through the mapping and public consultation carried out in accordance with paragraph 5. Credibly planned networks shall be taken into account for the assessment of the step-change only if they would, on their own, provide similar performance to that of the planned State funded network in the target areas within the relevant time horizon. A step change takes place if, as a result of the subsidised intervention, a significant new investment in the broadband network is undertaken and the subsidised network brings significant new capabilities to the market in terms of broadband service availability, capacity, speeds and competition compared to the existing or credibly planned networks within the relevant time horizon. The intervention shall include more than 70°% investments in broadband infrastructure. In any case, an eligible intervention, as laid down in paragraph 3, must result at least in the following improvements:

(a) for interventions under paragraph 3, point (a), the State funded network shall at least triple the download speed compared to the existing networks (target speed);

(b) for interventions under paragraph 3, point (b), the State funded network shall at least triple the download speed compared to the existing networks and shall provide a speed of at least 1 Gbps download under peak-time conditions (target speed).

7. The aid shall be granted as follows:

(a) the aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection procedure in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer;

(b) when the aid is granted without a competitive selection procedure to a public authority to deploy and manage, directly or through an in-house entity, a fixed broadband network, the public authority or the in-house entity, as the case may be, shall provide only wholesale services using the subsidised network. Any concession or other entrustment to a third party to build or operate the network shall be allocated through an open, transparent and non-discriminatory competitive selection procedure, in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer.

8. The subsidised network shall offer wholesale access, in accordance with Article 2, point (139), under fair and non-discriminatory conditions. By derogation, interventions eligible under paragraph (3), point (a) may offer virtual unbundling instead of physical unbundling if the virtual unbundling access product is approved in advance by the national regulatory authority or other competent authority. Active wholesale access shall be granted for at least ten years from the start of the operation of the network and the wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. Access based on virtual unbundling must be granted for a period of time equal to the lifespan of the infrastructure for which virtual unbundling is a substitute. The same access conditions shall apply to the entirety of the network, including on parts of the network where existing infrastructures have

been used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the network. The network shall provide access to at least three access seekers and shall make available at least 50°% of the capacity to access seekers. In order to render the wholesale access effective and to enable the access seekers to provide services, wholesale access shall also be granted to parts of the network that have not been State funded or that may not have been deployed by the aid beneficiary, such as by granting access to active equipment even if only broadband infrastructure is financed.

9. The wholesale access price shall be based on one of the following benchmarks and pricing principles:

(a) the average published wholesale prices that prevail in other comparable and more competitive areas of the Member State;

(b) the regulated prices already set or approved by the national regulatory authority for the markets and services concerned; or

(c) cost orientation or a methodology mandated in accordance with the sectorial regulatory framework.

Without prejudice to the competences of the national regulatory authority under the regulatory framework, the national regulatory authority shall be consulted on wholesale access products, the terms and conditions for access, including on prices, and on disputes related to the application of this Article.

10. Member States shall put in place a monitoring and claw-back mechanism if the amount of aid granted to the project exceeds EUR 10 million.

11. To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, the aid beneficiary shall ensure accounting separation between the funds used for the deployment and the operation of the State funded network and other funds at its disposal.

Article 52a

Aid for 4G and 5G mobile networks

1. Aid for 4G and 5G mobile network deployment shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be all costs for the construction, management and operation of passive and active components of a mobile network. The maximum aid amount for a project shall be established on the basis of a competitive selection process as set out in paragraph 7, point (a). Where an investment is carried out in accordance with paragraph 7, point (b), without a competitive selection process, the aid amount shall not exceed the difference between the eligible costs and the normal operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante on the basis of reasonable projections and verified ex post through a claw-back mechanism. The reasonable projection of the measure requires that all costs and all revenues, which are expected to be incurred over the economic lifetime of the investment, shall be taken into account.

3. Mobile 5G network deployment shall be located in areas where there are no 4G and no 5G mobile networks existing or credibly planned to be deployed within the relevant time horizon. Mobile 4G network deployment shall be located in areas where there are no 3G, 4G or 5G mobile networks existing or credibly planned to be deployed within the relevant time horizon. These requirements shall be verified by mapping and public consultation in accordance with paragraph 4.

4. The mapping and public consultation for the purposes of paragraph 3 shall meet the following requirements cumulatively:

(a) the mapping shall clearly identify the geographic target areas planned to be covered under the State intervention and shall take into account all existing mobile networks. Mapping shall be performed on the basis of maximum 100x100 metre grids. All the elements of the methodology and the underlying technical criteria used to map the target areas must be made publicly available. Mapping shall always be verified through a public consultation;

Where a network deployment includes, at the same time, the deployment of an access network and a limited deployment of the necessary ancillary backhaul network to enable the functioning of the access network, a separate mapping of backhaul networks is not required;

(b) the public consultation shall be carried out by the competent public authority through the publication of the main characteristics of the planned State intervention and the list of geographic target areas identified in the mapping exercise in accordance with point (a). That information must be made available on a publicly accessible website at regional and national level. The public consultation shall invite interested parties to comment on the planned State intervention and to submit substantiated information in accordance with point (a) regarding their mobile networks with the characteristics set out in paragraph 3 that are existing or credibly planned to be deployed in the target area within the relevant time horizon. The public consultation shall last at least 30 days.

5. The aided infrastructure shall not be taken into account to meet the coverage obligations of the mobile networks operators that arise out of conditions attached to rights of use of 4G and 5G spectrum.

6. The intervention shall bring a significant improvement (step change) compared to the mobile networks existing or credibly planned to be deployed within the relevant time horizon, as identified through mapping and public consultation carried out in accordance with paragraph 4. Credibly planned networks shall be taken into account for the assessment of the step-change only if they would, on their own, provide similar performance to that of the planned State funded network in the target areas within the relevant time horizon. A step change takes place if, as a result of the subsidised intervention, a significant new investment in the mobile network is undertaken and the subsidised network brings significant new capabilities to the market in terms of mobile service availability, capacity, speeds and competition compared to the existing or credibly planned networks within the relevant time horizon. The intervention shall include more than 50°% investment in broadband infrastructure.

7. The aid shall be granted as follows:

(a) the aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection procedure in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer;

(b) when the aid is granted without a competitive selection procedure to a public authority to deploy and manage, directly or through an in-house entity, a mobile network, the public authority or the in-house entity, as the case may be, shall provide only wholesale services using the subsidised network. Any concession or other entrustment to a third party to build or operate the network shall be allocated through an open, transparent and non-discriminatory competitive selection process, in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer.

8. The operation of the subsidised network shall offer wholesale access, in accordance with Article 2, point (139), under fair and non-discriminatory conditions. Active wholesale access shall be granted for at least ten years from the start of the operation of the network and wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. The same access conditions shall apply on the entirety of the network, including on the parts of such network where existing infrastructures have been used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the network. In order to render the wholesale access effective and to enable the access seekers to provide services, wholesale access shall also be granted to parts of the network that have not been State funded or that may not have been deployed by the aid beneficiary, such as by granting access to active equipment even if only broadband infrastructure is financed.

9. The wholesale access price shall be based on one of the following benchmarks and pricing principles:

(a) the average published wholesale prices that prevail in other comparable and more competitive areas of the Member State;

(b) the regulated prices already set or approved by the national regulatory authority for the markets and services concerned; or

(c) cost orientation or a methodology mandated in accordance with the sectorial regulatory framework.

Without prejudice to the competences of the national regulatory authority under the regulatory framework, the national regulatory authority shall be consulted on the wholesale access products, the terms and conditions for access, including on prices, and on disputes related to the application of this Article.

10. Member States shall put in place a monitoring and claw-back mechanism if the amount of aid granted to the project exceeds EUR 10 million.

11. The use of the State funded mobile 4G or 5G network to provide fixed wireless access services shall only be allowed in areas where there is no network providing speeds of at least 100 Mbps download under peak-time conditions existing or credibly planned to be deployed within the relevant time horizon, if the following cumulative conditions are met:

(a) the mapping and public consultation exercise takes also into account the fixed broadband networks existing or credibly planned determined according to Article 52(4);

(b) the supported 4G or 5G fixed wireless access network shall at least triple the download speed compared to the existing or credibly planned networks (target speed) according to Article 52(5).

12. To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, the aid beneficiary shall ensure accounting separation between the funds used for the deployment and the operation of the State funded network and other funds at its disposal.";

(47) Article 52c is replaced by the following:

"Article 52c

Connectivity vouchers

1. Aid in the form of a connectivity voucher scheme for consumers, to facilitate teleworking, online education, training services, or for SMEs shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The duration of a voucher scheme shall not exceed 3 years. The validity of the vouchers for end users cannot exceed 2 years.

3. The following categories of vouchers shall be eligible:

(a) vouchers available to consumers and SMEs for subscribing to a new broadband service or upgrading the existing subscription to a service providing speeds of at least 30 Mbps download under peak-time conditions, provided that all providers of electronic communications services providing speeds of at least 30 Mbps download under peak-time conditions are eligible under the scheme. Vouchers shall not be awarded for switching providers providing the same speeds as the speeds already available under the existing subscription or for upgrades of an existing subscription of at least 30 Mbps download under peak-time conditions;

(b) vouchers available to SMEs for subscribing to a new broadband service or upgrading the existing subscription to a service providing speeds of at least 100 Mbps download under peak-time conditions, provided that all providers of electronic communications services providing speeds of at least 100 Mbps download under peak-time conditions are eligible under the scheme. Vouchers shall not be awarded for switching providers providing the same speeds as the speeds already available under the existing subscription or for upgrades of an existing subscription of at least 100 Mbps download under peak-time conditions.

4. The vouchers shall cover up to 50 % of the eligible costs. Eligible costs are the monthly fee, the standard set-up costs and the necessary terminal equipment for the end users to use the broadband services with the speeds specified in paragraph 3. The costs for in-house wiring and limited deployment in the end users' private properties or in the public property in close proximity to the end users' private properties are also eligible to the extent they are necessary

and ancillary to the provision of the service. The voucher shall be paid by the public authorities directly to the end-users or directly to the service provider chosen by the end users.

5. Vouchers shall not be provided for areas where there is no network providing the eligible services specified in paragraph 3. Member States must carry out a public consultation through publication of the main characteristics of the scheme and of the list of geographic target areas on a publicly accessible website at regional and national level. The public consultation shall invite interested parties to comment on the draft measure and to submit substantiated information regarding their existing networks able to reliably provide the speed specified in paragraph 3. The public consultation shall last at least 30 days.

6. Vouchers shall be technologically neutral. The schemes shall ensure equal treatment of all possible service providers and shall offer end users the widest possible choice of providers irrespective of the technologies used. For that purpose, the Member State shall set up an online registry of all eligible service providers or implement an equivalent alternative method to ensure the openness, transparency and non-discriminatory nature of the State intervention. End users shall have the possibility to consult this information about all undertakings that are able to provide eligible services. All undertakings capable of providing eligible services shall have the right, upon request, to be included in the online registry or in any alternative location chosen by the Member State.

7. In order to minimise market distortions, Member States shall carry out a market assessment identifying the eligible providers present in the area and collecting information to calculate their market share, the take-up of eligible services and their prices. Aid shall only be granted if the market assessment determines that the scheme is designed sufficiently broadly in order not to unduly benefit a limited number of providers and that the scheme does not lead to reinforcing the (local) market power of certain providers.

8. To be eligible, when a provider of broadband services is vertically integrated and has a retail market share above 25 %, it must offer, on the corresponding wholesale access market, wholesale access products on the basis of which any access seeker will be able to provide the eligible services at the speed specified in paragraph 3, under open, transparent and non-discriminatory conditions.

The wholesale access price shall be set on one of the following benchmarks and pricing principles:

(a) the average published wholesale prices that prevail in other comparable and more competitive areas of the Member State;

(b) the regulated prices already set or approved by the national regulatory authority for the markets and services concerned;

(c) costs orientation or a methodology mandated in accordance with the sectoral regulatory framework.

Without prejudice to the competences of the national regulatory authority under the regulatory framework, the national regulatory authority shall be consulted on on wholesale access products, the terms and conditions for access, including on prices, and on disputes related to the application of this Article.";

(48) The following Article 52d is inserted:

"Article 52d

Aid for backhaul networks

1. Aid for backhaul network deployment shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be all costs for the construction, management and operation of a backhaul network. The maximum aid amount for a project shall be established on the basis of a competitive selection process as set out in paragraph 6, point (a). Where an investment is carried out in accordance with paragraph 6, point (b), without a competitive selection process, the aid amount shall not exceed the difference between the eligible costs and the normal operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante on the basis of reasonable projections and verified ex post through a claw-back mechanism. The reasonable projection of the measure requires that all costs and all revenues, which are expected to be incurred over the economic lifetime of the investment, shall be taken into account.

3. Backhaul network deployment shall be located in areas where there is no backhaul network based on fibre or on other technologies able to provide the same level of performance and reliability as fibre existing or credibly planned to be deployed within the relevant time horizon. This shall be verified by mapping and public consultation in accordance with paragraph 4.

4. The mapping and public consultation for the purposes of paragraph 3 shall meet the following requirements cumulatively:

(a) the mapping shall identify the target areas for the backhaul State intervention and shall take into account all existing backhaul networks. All the elements of the methodology and the underlying technical criteria used to map the target areas must be made publicly available. Mapping shall always be verified through a public consultation;

(b) the public consultation shall be carried out by the competent public authority through the publication of the main characteristics of the planned State intervention and the list of areas identified in the mapping exercise in accordance with point (a). That information must be made available on a publicly accessible website at regional and national level. The public consultation shall invite interested parties to comment on the planned State intervention and to submit substantiated information in accordance with point (a) regarding the backhaul networks existing or credibly planned to be deployed within the relevant time horizon. The public consultation shall last at least 30 days.

5. The intervention shall bring a significant improvement (step change) compared to the backhaul networks existing or credibly planned to be deployed within the relevant time horizon, as identified through mapping and public consultation carried out in accordance with paragraph 4. Credibly planned networks shall be taken into account for the assessment of the step-change only if they would, on their own, provide similar performance to that of the planned State funded network in the target areas within the relevant time horizon. A step change takes place if, as a result of the subsidised intervention, a significant new investment in the backhaul network is undertaken and the subsidised backhaul network is based on fibre or on other technologies able to provide the same level of performance of fibre, as opposed to the existing

or credibly planned networks within the relevant time horizon. The intervention must include more than 70°% investment in broadband infrastructure.

6. The aid shall be granted as follows:

(a) the aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection procedure in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer;

(b) when the aid is granted without a competitive selection procedure to a public authority to deploy and manage, directly or through an in-house entity, a backhaul network, the public authority or the in-house entity, as the case may be, shall provide only wholesale services using the subsidised network. Any concession or other entrustment to a third party to build or operate the network shall be allocated through an open, transparent and non-discriminatory competitive selection procedure, in line with the principles of public procurement rules and respecting the principle of technology neutrality, based on the most economically advantageous offer.

7. The operation of the subsidised network shall offer wholesale access, in accordance with Article 2, point (139), under fair and non-discriminatory conditions to both fixed and mobile networks. Active wholesale access shall be granted for at least ten years from the start of the operation of the network and the wholesale access to the broadband infrastructure shall be granted for the lifetime of the elements concerned. The same access conditions shall apply to the entirety of the network, including on parts of the network where existing infrastructures have been used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the network. The State funded network shall cater for all fixed and mobile networks in the target areas of the backhaul intervention and shall make available at least 50% of the capacity to access seekers. In order to render the wholesale access effective and to enable the access seekers to provide services, wholesale access shall also be granted to parts of the network that have not been State funded or that may not have been deployed by the aid beneficiary, such as by granting access to active equipment even if only broadband infrastructure is financed.

8. The wholesale access price shall be based on one of the following benchmarks and pricing principles:

(a) the average published wholesale prices that prevail in other comparable, more competitive areas of the Member State;

(b) the regulated prices already set or approved by the national regulatory authority for the markets and services concerned; or

(c) cost orientation or a methodology mandated in accordance with the sectorial regulatory framework.

Without prejudice to the competences of the national regulatory authority under the regulatory framework, the national regulatory authority shall be consulted on wholesale access products, the terms and conditions for access, including on prices, and on disputes related to the application of this Article.

9. Member States shall put in place a monitoring and claw-back mechanism if the amount of aid granted to a project exceeds EUR 10 million.

10. To ensure that aid remains proportional and does not lead to overcompensation or cross-subsidisation of non-aided activities, the aid beneficiary shall ensure accounting separation between the funds used for the deployment and the operation of the State funded network and other funds at its disposal.";

(49) in Article 53, paragraph 8 is replaced by the following:

"8. For aid not exceeding EUR 2.2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 6 and 7.";

(50) in Article 55, paragraph 12 is replaced by the following:

"12. For aid not exceeding EUR 2.2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 10 and 11.";

(51) Article 56b is amended as follows:

(a) the following paragraph 1a is inserted:

"1a. Aid under this Article shall not be granted for the construction, installation, or upgrade of refuelling infrastructure supplying vessels with fossil-based fuels, such as diesel, natural gas, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG).";

(b) the following paragraph 2a is inserted:

"2a. For aid for recharging and refuelling infrastructure supplying electricity, hydrogen, ammonia and methanol, the eligible costs shall be the costs of the construction, installation, upgrade or extension of recharging or refuelling infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself and related technical equipment, including fixed, mobile or floating facilities, the installation of, or upgrades to, electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, as well as civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.

The eligible costs may also cover the investment costs of on-site production of renewable electricity or renewable hydrogen and the investment costs of storage units for storing renewable electricity or hydrogen. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.";

(c) paragraph 5 is replaced by the following:

"5. The aid intensity per investment referred to in point (a) of paragraph 2 shall not exceed:

(a) 100 % of the eligible costs where total eligible costs of the project are up to EUR 22 million;

(b) 80 % of the eligible costs where total eligible costs of the project are above EUR 22 million and up to EUR 55 million;

(c) 60 % of the eligible costs where total eligible costs of the project are above EUR 55 million and up to the amount laid down in point (ee) of Article 4(1).

The aid intensity shall not exceed 100 % of the eligible costs determined in point (b) of paragraph 2 and point (c) of paragraph 2 up to the amount laid down in point (ee) of Article 4(1).";

(d) the following paragraph 8a is inserted:

"8a. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely renewable hydrogen. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying ammonia or methanol, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely ammonia or methanol the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.";

(e) paragraph 9 is replaced by the following:

"9. For aid not exceeding EUR 5.5 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4, 5 and 6.";

(52) Article 56c is amended as follows:

(a) the following paragraph 1a is inserted:

"1a. Aid under this Article shall not be granted for the construction, installation, or upgrade of refuelling infrastructure supplying vessels with fossil-based fuels, such as diesel, natural gas, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG).";

(b) the following paragraph 2a is inserted:

"2a. For aid for recharging and refuelling infrastructure supplying electricity, hydrogen, ammonia and methanol, the eligible costs shall be the costs of the construction, installation, upgrade or extension of recharging or refuelling infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself and related technical equipment, including fixed, mobile or floating facilities, the installation of, or upgrades to, electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, as well as civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.

The eligible costs may also cover the investment costs of on-site production of renewable electricity or renewable hydrogen and the investment costs of storage units for storing renewable electricity or hydrogen. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.";

(c) the following paragraph 7a is inserted:

"7a. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely renewable hydrogen. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying ammonia or methanol, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely ammonia or methanol the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.";

(d) paragraph 8 is replaced by the following:

"8. For aid not exceeding EUR 2.2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4 and 5.";

(53) in Article 56d, paragraph 4 is replaced by the following:

"4. The maximum thresholds laid down in Articles 56e and 56f shall apply to the total outstanding financing, in so far as that financing provided under any financial product supported by the InvestEU Fund contains aid. The maximum thresholds shall apply:

(a) per project in the case of aid with identifiable eligible costs covered by Article 56e(2), (3) and (4), Article 56e(5), point (a)(i), Article 56e(6), (7), (8) and (9);

(b) per final beneficiary in the case of aid without identifiable eligible costs covered by Article 56e(5), points (a)(ii), (iii) and (iv), Article 56e(10) and Article 56f.";

(54) Article 56e is amended as follows:

(a) Paragraph 3 is replaced by the following:

"3. Aid for fixed broadband network deployment and aid for 4G and 5G mobile network deployment to connect certain eligible socioeconomic drivers shall comply with the following conditions:

(a) aid shall only be granted to projects fulfilling all compatibility conditions laid down respectively in Article 52 and Article 52a unless indicated otherwise in points (c) and (d) of this paragraph;

(b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 150 million;

(c) the project connects socioeconomic drivers that are public administrations or public or private entities entrusted with the operation of services of general interest or of services of general economic interest within the meaning of Article 106(2) of the Treaty. Projects including elements or entities other than those specified under this point are excluded;

(d) by way of derogation from Article 52(4), the identified market failure must be verified either by available appropriate mapping or, when such mapping is not available, by a public consultation, as follows:

(i) the mapping can be considered appropriate if it is not older than 18 months. The mapping shall clearly identify the socio economic drivers envisaged to be covered under the public intervention and shall include all networks providing, under peak time conditions, speeds of at least 100 Mbps download but below 300 Mbps download (threshold speeds) existing or credibly planned to be deployed in the relevant time horizon that pass the premises of the identified eligible socioeconomic driver as refered to in point (c). The mapping shall be carried out by the competent public authority. The mapping shall be performed (1) for purely fixed networks at address level on the basis of premises passed; (2) for fixed wireless access networks at address level on the basis of premises passed or on the basis of maximum 100x100 metre grids; (3) for mobile networks on the basis of maximum 100x100 metre grids. All the elements of the methodology and the underlying technical criteria used to map the target areas must be made publicly available. To foster synergies and simplification for the public administration, a geographical survey under Article 22 of Directive (EU) 2018/1972 may be considered to constitute an appropriate mapping in the meaning of this point, provided that the conditions laid down in this point are met;

(ii) the public consultation shall be carried out by the competent public authority through the publication on a publicly accessible website at regional and national level of the main characteristics of the planned State intervention. The public consultation shall invite interested parties to comment on the planned State intervention and to submit substantiated information regarding networks providing, under peak time conditions, speeds of at least 100 Mbps download but below 300 Mbps download (threshold speeds) existing or credibly planned to be deployed in the relevant time horizon and that pass the premises of an eligible socioeconomic driver as refered to in point (c) and identified in accordance with point (i), based on information: (1) for purely fixed networks, at address level on the basis of premises passed; (2) for fixed wireless access networks, at address level on the basis of premises passed or on the basis of maximum 100x100 metre grids; (3) for mobile networks on the basis of maximum 100x100 metre grids. The public consultation shall last at least 30 days.";

(b) in paragraph 4, points (a) and (b) are replaced by the following:

"(a) Aid shall be granted only for investments in energy infrastructure which are not exempted from third party access, tariff regulation and unbundling, based on the internal energy market legislation, for the following categories of projects:

(i) As regards gas infrastructure, projects included in the prevailing Union list of Projects of Common Interest in Annex VII to Regulation (EU) No 347/2013 of the European Parliament and of the Council*; and

(ii) All projects with regards to electricity infrastructure, hydrogen infrastructure and carbon dioxide infrastructure.

(b) investment aid for generation of energy from renewable energy sources shall comply with the following requirements:

(i) aid shall only be granted for new installations selected on a competitive, transparent, objective and non-discriminatory basis in line with the requirements set out in Article 41(10);

(ii) aid may be granted to combined renewable and electricity or thermal storage projects, provided that the requirements set out in Article 41(1a) are respected;

(iii) aid may be granted to combined biofuels, bioliquids, biogas (including biomethane) and biomass fuels storage projects, provided that the requirements set out in Article 41(2) are respected;

(iv) in case of installations producing renewable hydrogen, aid shall only be granted for installation compliant with the requirements set out in Article 41(3);

(v) in case of installations producing biofuels, aid shall only be granted for installations producing biofuels compliant with the sustainability and greenhouse gases emissions saving criteria referred to in article 29 of Directive (EU) 2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Annex IX to that Directive.

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* Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).";

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

"(a) the nominal amount of total financing provided to any final beneficiary under the support of the InvestEU Fund shall not exceed:

(i) EUR 110 million per project for investments in infrastructure used for the provision of social services and for education; EUR 165 million per project for cultural and heritage conservation purposes and activities set out in Article 53(2), including natural heritage;

(ii) EUR 33 million for activities related to social services;

(iii) EUR 82.5 million for activities related to culture and heritage conservation; and

(iv) EUR 5.5 million for education and training.";

(d) in paragraph 6, point (a)(v) is replaced by the following:

"(v) recharging or refuelling infrastructure that supplies vehicles with electricity or hydrogen. For aided refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 2035 at the latest, the refuelling infrastructure will solely supply renewable hydrogen. This paragraph does not apply to aid for investments relating to recharging and refuelling infrastructure in ports.";

(e) in paragraph 6, point (b)(iv) is added:

"(iv) When aid is granted for refuelling infrastructure supplying hydrogen, the beneficiary shall give a commitment that by 2035 at the latest, the refuelling infrastructure will solely supply renewable hydrogen. When aid is granted for the construction, installation or upgrade of a refuelling infrastructure supplying ammonia or methanol, the beneficiary shall give a commitment that by 2035 at the latest the aided refuelling infrastructure will supply solely ammonia or methanol the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.";

(f) paragraph 6, point (c) is replaced by the following:

"(c) the nominal amount of total financing provided under point (a) or (b) to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 165 million.";

(g) in paragraph 7, point (a)(ii) is replaced by the following:

"(ii) investment for resource efficiency and circularity in line with Article 47(1) to (6) and (10);";

(h) in paragraph 7, the following point (a)(v) is added:

"(v) investment in testing and experimentation infrastructures;";

(i) in paragraph 7, point (b) is replaced by the following:

"(b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 110 million.";

(j) in paragraph 8, point (a)(i) is replaced by the following:

"(i) investments enabling undertakings to remedy or prevent damage to physical surroundings (including climate change) or natural resources by a beneficiary's own activities or by activities of another entity participating in the same project, provided that (i) the investments do not concern equipment, machinery or industrial production facilities using fossil fuels, including natural gas, without prejudice to the possibility to grant aid for the installation of add-on components improving the level of environmental protection of existing equipment, machinery and industrial production facilities, in which case the investment costs shall not relate to CO2-emitting installations; and (ii) in case of investments in equipment, machinery and industrial production facilities using hydrogen, the beneficiary commits to exclusively use renewable hydrogen throughout the lifetime of the investment. Aid shall not be granted under this point for investments undertaken to comply with Union standards that have been adopted, except if the investment is implemented and finalised at least 18 months before the standard enters into force.";

(k) in paragraph 8, point (a)(ii) is replaced by the following:

"(ii) measures improving the energy efficiency of a building or an undertaking, provided that the investments do not concern equipment, machinery or industrial

production using fossil fuels, including natural gas. Aid shall not be granted under this point for investments undertaken to comply with Union standards that have been adopted, except if the investment is implemented and finalised at least 18 months before the standard enters into force. By way of derogation, aid may be granted under this letter for investments in buildings undertaken to comply with minimum energy performance standards qualifying as Union standards, provided that the aid is granted before the standards become mandatory for the undertaking concerned.";

(l) in paragraph 8, point (a)(vi) is inserted:

"(vi) investment aid for the acquisition of clean vehicles powered at least partially by electricity or by hydrogen, or zero-emission vehicles for road, railway, inland waterway and maritime transport and for the retrofitting of vehicles to qualify as clean vehicles or as zero-emission vehicles;";

(m) in paragraph 8, point (b) is replaced by the following:

"(b) Without prejudice to point (a), the aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

(i) the installation of integrated on-site equipment generating electricity, heating or cooling from renewable energy sources, including but not limited to photovoltaic panels and heat pumps;

(ii) the installation of equipment for the storage of the energy generated by the on-site renewable energy installations;

(iii) the connection to an energy efficient district heating and/or cooling system and related equipment;

(iv) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where car parking facilities are located either inside the building or are physically adjacent to the building;

(v) the installation of equipment for the digitalisation of the building, in particular to increase its smart-readiness, including passive in-house wiring or structured cabling for data networks and the ancillary part of the broadband infrastructure on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property;

(vi) investments in green roofs and equipment for the retention and use of rain water.

The aid measure shall not support the installation of energy equipment using fossil fuels, including natural gas.

The aid may be granted either to the building owner(s) or tenant(s), depending on who obtains the financing for the project.";

(n) in paragraph 8, point (e) is replaced by the following:

"(e) aid for energy efficiency improvement measures may also relate to the facilitation of energy performance contracting, subject to the following cumulative conditions:

(i) the support is provided to SMEs or small mid-caps that are providers of energy performance improvement measures, and which are the final beneficiaries of the aid;

(ii) the aid is provided for the facilitation of energy performance contracting within the meaning of Article 2, point (27), of Directive 2012/27/EU;

(iii) the aid takes the form of a senior loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consists in a financial product aimed at financing the provider (for example, factoring or forfaiting);

(iv) the nominal amount of total outstanding financing provided under this point per beneficiary does not exceed EUR 30 million.";

(o) paragraph 10 is replaced by the following:

"10. SMEs or, where applicable, small mid-caps may, in addition to the categories of aid provided for in paragraphs 2 to 9, also receive aid in the form of financing supported by the InvestEU Fund provided that the respective conditions are fulfilled:

(a) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 16.5 million and is provided to:

(i) unlisted SMEs that have not yet been operating in any market or have been operating for less than 10 years following their registration or less than seven years after their first commercial sale; where either the period of operating for less than 10 years following their registration or less than seven years after their first commercial sale has been applied to a given undertaking, only that period can be applied also to any subsequent aid under the present Article to the same undertaking. For undertakings that have acquired another undertaking or were formed through a merger, the eligibility period applied shall also encompass the operations of the acquired undertaking or the merged undertakings, respectively, except for such acquired or merged undertakings whose turnover accounts for less than 10 % of the turnover of the acquiring undertaking in the financial year preceding the acquisition or, in case of undertakings formed through a merger, less than 10 % of the combined turnover that the merging undertakings had in the financial year preceding the merger. Concerning the registration-related eligibility period, if used, for eligible undertakings that are not subject to registration, the ten-year eligibility period is considered to start from the earlier of either the moment when the undertaking starts its economic activity or the moment when it becomes liable to tax with regard to its economic activity. The financing under the support of the InvestEU Fund may also cover follow-on investments in unlisted SMEs after the eligibility period referred to in this point if the following cumulative conditions are fulfilled: (1) the nominal amount of total financing referred to in point (a) is not exceeded, (2) the possibility of follow-on investments was provided for in the original business plan and (3) the final beneficiary receiving the follow-on investment has not become a 'linked enterprise', within the meaning of Article 3(3) of Annex I, with another

undertaking other than the financial intermediary or an independent private investor providing financing under the support of the InvestEU Fund, unless the new entity is an SME;

(ii) unlisted SMEs starting a new economic activity, where the initial investment shall be higher than 50 % of the average annual turnover in the preceding five years. By derogation from the first sentence, the following shall be considered investments for new economic activities, if the related initial investment, based on a business plan, is higher than 30 % of the average annual turnover in the preceding five years: (1) investments significantly improving the environmental performance of the activity beyond mandatory Union standards in accordance with Article 36(2) of this Regulation, (2) other environmentally sustainable investments as defined in Article 2(1) of Regulation (EU) 2020/852, and (3) investments aiming at increasing capacity for the extraction, separation, refining, processing or recycling of a critical raw material listed in Annex IV. The environmentally sustainable character of the investment shall be demonstrated in accordance with Article 3 of Regulation (EU) 2020/852, including the 'do no significant harm' principle, or through other comparable methodologies, including, among others, the sustainability proofing for the InvestEU Fund. For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, their compliance with the 'do no significant harm' principle is considered fulfilled as this has already been verified;

(iii) SMEs and small mid-caps that are innovative enterprises as defined in Article 2, point (80);

(b) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 16.5 million and is provided to SMEs or small mid-caps whose principal activities are located in assisted areas provided that the financing is not used for relocation of activities as defined in Article 2, point (61a);

(c) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 2.2 million and is provided to SMEs or small mid-caps.";

(55) Article 56f, paragraph 3, is replaced by the following:

"The nominal amount of total financing provided to each final beneficiary through all commercial financial intermediaries shall not exceed EUR 8,25 million.";

(56) in Article 58, paragraphs 3a and 4 are replaced by the following:

"3a. Any individual aid granted between 1 July 2014 and [date of entry into force of this amendment] in accordance with the provisions of this Regulation as applicable at the time of granting the aid shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty. Any individual aid granted before 1 July 2014 in accordance with the provisions of this Regulation, with the exception of Article 9, as applicable either before or after 10 July 2017, before or after 3 August 2021, or before or after [date of entry into force of this amendment] shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty.

4. At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months. The exemption

of risk finance aid exempted pursuant to Article 21(9), point (a) shall expire at the end of the period set out in the funding agreement, provided the commitment of public funding to the supported private equity investment fund was made on the basis of such agreement within 6 months from the end of the period of validity of this Regulation and all other conditions for exemption remain fulfilled.";

(57) in Article 59, the second subparagraph is replaced by the following:

"It shall apply until 31 December 2026.";

(58) in Annex II, Part II is replaced by the text set out in the Annex to this Regulation.

(59) The following Annex IV is added:

"ANNEX IV

Critical raw materials referred to in Article 21(3)(c) and Article 56e (10)(a)(ii)

The following raw materials shall be considered as critical raw material as referred to in Article 21, paragraph 3, point (c) and Article 56e, paragraph 10, point (a)(ii):

[Placeholder: For the adoption of the Regulation, the list contained in the Commission Proposal for a Critical Raw Materials Act will be included here.]".

Article 2

Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union[23] is amended as follows:

(60) in Article 56 the following paragraph 3 is added:

"3. This Article shall expire on 30 June 2023.".

Article 3

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

[23] OJ L 327, 21.12.2022, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President