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## **COMMUNICATION FROM THE COMMISSION**

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

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

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

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

into the EU from Russia and Belarus. The crisis has had serious consequences on the supply of grain (in particular maize and wheat) and oilseeds (sunflower, rapeseed) or starch-derivatives from Ukraine and Russia to the EU, leading to a strong temporary increase in livestock feed prices. The combined impact of those cost increases in energy, fertiliser, grains and oils is hardest felt by livestock farming in the EU<sup>1</sup>. Ukraine is also an important producer and exporter of vegetable oils (sunflower in particular), therefore price increases for those products are affecting operators in the food-processing sector and forcing them to seek for alternatives.

- (5) A second concern is the trade disruption of EU products to Ukraine and also to Russia and Belarus due to the war situation or its direct or indirect effects. This would affect mainly the sectors of wines and spirits, processed foods (including processed fruits and vegetables), chocolate, confectionery, infant formula, and pet food in the case of Russia, fruits and vegetables in the case of Belarus, and most agricultural products in the case of Ukraine.
- (6) The situation is aggravated by the sharp increase of production costs, in part through the increase of nitrogen fertiliser costs due to the extreme increase of the price of natural gas, but also by direct use of energy in agricultural, fishery and aquaculture production processes.
- (7) The geopolitical crisis provoked by Russia's aggression against Ukraine and its weaponisation of energy supplies also exacerbates the urgency for the EU to reduce its dependence on fossil fuels by accelerating the roll-out of renewable energy, decarbonisation of industry and the deployment of capacities in sectors strategic to the transition towards a net-zero economy, also considering global challenges posing a threat of investments in these sectors being diverted in favour of third countries outside the EEA.
- (8) It is against that background that the Commission has decided to adopt this Communication to specify the criteria for the assessment of the compatibility with the internal market of State aid measures that Member States may take to remedy the economic effects following the aggression against Ukraine by Russia and its direct and indirect effects, including the counter measures taken, for example by Russia<sup>2</sup>. A coordinated economic response of Member States and EU institutions is crucial to mitigate the immediate social and economic negative repercussions in the EU, to preserve economic activities and jobs, and to facilitate the structural adjustments

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

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

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

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

- (9) Following the unprovoked and unjustified aggression against Ukraine by Russia, the Council of the European Union has agreed on several packages of restrictive measures.
- (10) On 23 February 2022, the Council agreed on a package including (i) targeted sanctions against the 351 members of the Russian State Duma and an additional 27 individuals, (ii) restrictions on economic relations with the non-government controlled areas of Donetsk and Luhansk regions of Ukraine, and (iii) restrictions on Russia's access to the EU's capital and financial markets and services<sup>3</sup>.
- (11) On 25 February 2022, the Council agreed on further sanctions against Russia that target: (i) the financial sector, (ii) the energy, space and transport sectors (aviation), (iii) dual-use goods, (iv) export control and export financing, (v) visa policy, and (vi) additional sanctions against Russian and other (including Belarusian) individuals<sup>4</sup>

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

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

- (12) On 28 February 2022, the Council decided to close the European airspace for Russian aircraft and adopted preventive measures to ensure that the Russian Central Bank cannot deploy its international reserves in ways that undermine the impact of the measures taken<sup>5</sup>. The Council also adopted additional sanctions against Russian persons<sup>6</sup>.
- (13) On 1 March 2022, the Council adopted further measures: (i) the removal of selected Russian banks from the SWIFT messaging system<sup>7</sup>, (ii) measures against disinformation spread by Russian State-owned media Russia Today and Sputnik<sup>8</sup>.
- (14) On 2 March 2022, due to its role in facilitating the military aggression, the Council decided to introduce further sanctions against Belarus related to the trade of goods used for the production or manufacturing of tobacco products, mineral products, potassium chloride ('potash') products, wood products, cement products, iron and steel products, and rubber products. It also prohibited the export to Belarus or for use in Belarus of dual-use goods and technology, exports of goods and technology which might contribute to Belarus's military, technological, defence and security development, and exports of machinery, together with restrictions on the provision of related services<sup>9</sup>. The Council also adopted individual measures against 22 Belarusian individuals<sup>10</sup>.

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

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

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

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

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

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

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

- (15) On 9 March 2022, the Council adopted additional measures targeting the Belarusian financial sector, including a SWIFT ban for three Belarusian banks, a prohibition on transactions with the Central Bank of Belarus, limits on the financial inflows from Belarus to the EU and a prohibition on the provision of euro-denominated banknotes to Belarus<sup>11</sup>. The Council also introduced further restrictive measures with regard to the export of maritime navigation goods and radio communication technology to Russia. In addition, the Council imposed restrictive measures on an additional 160 individuals<sup>12</sup>. On 15 March 2022<sup>13</sup>, the Council agreed on further sectoral and individual measures against Russia. The Council decided in particular to: (i) prohibit all transactions with certain State-owned enterprises, (ii) prohibit the provision of any credit rating services, as well as access to any subscription services in relation to credit rating activities, to any Russian person or entity, (iii) expand the list of persons connected to Russia's defence and industrial base, on whom tighter export restrictions are imposed regarding dual-use goods and technology which might contribute to Russia's technological enhancement of its defence and security sector, (iv) prohibit new investments in the Russian energy sector, and introduce a comprehensive export restriction on equipment, technology and services for the energy industry, and (v) introduce further trade restrictions concerning iron and steel, as well as luxury goods<sup>14</sup>. Furthermore, the Council decided to sanction key Russian oligarchs, lobbyists and propagandists, as well as key companies in the aviation, military and dual use, shipbuilding and machine building sectors<sup>15</sup>.
- (16) On 3 June 2022, the Council adopted a sixth package of sanctions<sup>16</sup>, in light of Russia's continuing war of aggression against Ukraine, Belarus' support for it, and the

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

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

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

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

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

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

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

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

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

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

<sup>18</sup> Council Regulation (EU) 2022/1903 of 6 October 2022 amending Regulation (EU) 2022/263 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas, (OJ L259I, 6.10.2022, p. 1), Council Regulation (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, (OJ L259I, 6.10.2022, p. 3), Council Regulation (EU) 2022/1905 of 6 October 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L259I, 6.10.2022, p. 76), Council Implementing Regulation (EU) 2022/1906 of 6 October 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L259I, 6.10.2022, p. 79), Council Decision (CFSP)

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

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

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

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

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



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

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

- (21) The current crisis has driven up the prices for gas and electricity to unprecedented highs, significantly above the already elevated levels observed in the period before the aggression. Russia's deliberate weaponisation of gas flows has created significant volatility and uncertainty in the EU and global energy markets. The EU and its Member States have taken numerous measures to address high prices and secure energy supplies. In this context, the Commission refers to the toolbox which it presented already in October 2021<sup>21</sup> (the 'October Communication'), the REPowerEU Communication of 8 March 2022 ('the REPowerEU Communication')<sup>22, 23</sup>, the REPowerEU Plan<sup>24</sup> of 18 May 2022, the Gas Storage Regulation<sup>25</sup>, the Save Gas for a Safe Winter Communication<sup>26</sup> of 20 July 2022, the Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas<sup>27</sup> and the Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices<sup>28</sup>. On 18 October 2022, the Commission adopted the Energy Emergency Communication<sup>29</sup> to prepare, purchase and protect the EU together. In conjunction with this Communication the Commission proposed a new emergency regulation<sup>30</sup> to address high gas prices in the EU and ensure security of supply for the upcoming winter. This will be done through

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

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

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

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

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

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

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

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

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

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

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

- (22) Very high energy prices are hurting the economy as well as the purchasing power of EU citizens, notably the most vulnerable. The European Central Bank estimated that real GDP will contract by 0.1% in the last quarter of 2022 and remain flat in the first quarter of 2023 mainly owing to the impact of energy supply disruptions, higher inflation and the related fall in confidence.<sup>31</sup> Continued high energy prices are likely to increase poverty and affect business competitiveness. Energy-intensive industries in particular have faced higher manufacturing costs. These cost increases can in certain cases put into question the continued activity in the EU of undertakings which otherwise would be profitable, with a likely subsequent impact on employment.
- (23) The toolbox presented by the Commission in October 2021 has proven useful, and has been extensively applied by many Member States who have adopted numerous measures at national level. The toolbox was expanded in spring 2022 with the Communication on short-term market interventions and long-term improvements to the electricity market design<sup>32</sup>.
- (24) The REPowerEU Communication outlined measures to respond to rising energy prices and replenish gas stocks for the winter and the REPowerEU plan<sup>33</sup> sets out actions to accelerate the rollout of renewable energy, energy savings and energy efficiency and to diversify energy supplies. Accelerating the green transition will reduce emissions, reduce dependency on imported fossil fuels, and protect against price hikes. The Gas Storage Regulation<sup>34</sup> established new minimum gas storage obligations to ensure supply for the coming winter, requiring Member States to fill gas storage facilities by 1 November to 80% in 2022 and to 90% by the same date in the years to follow.
- (25) As the crisis further amplified risks of security of supply and disruptions, the Union started to prepare for a protracted and possibly full cut of gas from Russia. The new European Gas Demand Reduction Plan<sup>35</sup> sets out measures, principles and criteria for coordinated demand reduction and is accompanied by the Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas<sup>36</sup> which sets a voluntary gas demand reduction target of 15% in all Member States and introduces a process to trigger a binding demand reduction target should it become necessary.

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<sup>31</sup> ECB staff macroeconomic projections for the euro area, September 2022.

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

<sup>33</sup> COM/2022/230 final, 18 May 2022.

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

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

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

- (26) On 6 October 2022, the Council adopted Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices to reduce the energy bills for European citizens and businesses. Among others, the Regulation (EU) 2022/1854 includes measures to reduce electricity demand, which will help lower the electricity costs for consumers and to redistribute the energy sector's surplus revenues to final customers.
- (27) On 19 and 22 December 2022, the Council adopted further Regulations to tackle the high energy prices, namely: Council Regulation (EU) 2022/2576 on enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks<sup>37</sup>, Council Regulation (EU) laying down a framework to accelerate the deployment of renewable energy<sup>38</sup> and Council Regulation (EU) 2022/2578 establishing a market correction mechanism to protect citizens and the economy against excessively high prices<sup>39</sup>.

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

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

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

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

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

has a central role in mobilising support for those priority areas, in particular with regard to energy and the Green Deal Industrial Plan<sup>40</sup>. Therefore, to the extent that the measures put in place by the implementing partners and financial intermediaries of InvestEU are subject to state aid rules, those measures may be covered by the schemes approved by the Commission under sections 2.5, 2.6 and 2.8 of this Communication. Because the support of investments into production facilities could lead to tensions with overarching objectives of the integrity of the internal market and cohesion, such support needs to be clearly confined to the defined strategic areas, limited in time and nominal aid amounts and ensure sufficient incentives to address cohesion objectives. This Communication sets out in section 2.8 the specific conditions under which support for investments for specific measures for the transition towards a net-zero economy will exceptionally be considered compatible. In so far as this section covers the possibility to provide individual support outside a scheme, it will either be limited to assisted areas as defined in the applicable regional aid maps or it will have to involve investments in at least three EEA Member States, of which a significant part should take place in at least two assisted areas. This requirement will contribute to the further development of a broader ecosystem along the relevant value chain across Europe, strengthening the supply chain resilience.

#### **1.4. Appropriate State aid measures**

- (31) In the overall effort of Member States to address the challenges resulting from the Russian war of aggression against Ukraine, this Communication sets out the possibilities Member States have under EU State aid rules to ensure liquidity and access to finance for undertakings, especially SMEs that face economic challenges under the current crisis, and to incentivise reduced energy consumption.
- (32) As set out in the 2021 October Communication, measures benefiting non-commercial energy consumers do not constitute State aid, provided they do not indirectly benefit a specific sector or undertaking. Member States can, for example, make specific social payments to those most at risk which could help them afford their energy bills in the short term, or provide support for energy efficiency improvements, while ensuring effective market functioning.
- (33) Measures targeting commercial energy consumers do not constitute State aid, provided such measures are of a general nature. Such non-selective measures can, for example, take the form of general reductions in taxes or levies, a reduced rate to the supply of natural gas, electricity or district heating or reduced network costs. To the extent national interventions qualify as aid, they may be considered compatible with State aid rules if they meet certain requirements. For example, aid in the form of reductions in harmonised environmental taxes that respect the minimum levels of taxation and the rules set out in the Energy Taxation Directive<sup>41</sup> and are in line with the provisions of a Block Exemption Regulation may be implemented by Member States without prior notification to the Commission.

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

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

- (34) With respect to sections 2.1 and 2.4 of this Communication aid can be granted directly to the final beneficiary or channelled through an energy supplier. If aid is channelled through an energy supplier, the Member State must demonstrate that it operates a mechanism that preserves competition between suppliers and that ensures that the aid is passed on to the final beneficiary.
- (35) The Commission considers that certain financial needs may require different tools than those covered by sections 2.1, 2.2 and 2.3 of this Communication. This might in particular be the case where the current crisis leads not only to liquidity needs but also to considerable losses that may undermine the beneficiary's ability to service its debt and point at solvency needs. In cases where large amounts of aid are granted to individual beneficiaries and where the ability of those beneficiaries to service their debt, based on their past earning capacity, seems challenging, Member States may consider asking for information from the beneficiaries about their projected future earnings capacity to continue servicing the debt, with the aim of assessing whether the use of different tools, such as solvency support, may be or may become more adequate to address their financial needs.
- (36) In specific circumstances<sup>42</sup>, Member States may consider that undertakings severely affected by the current crisis require solvency support that cannot be sufficiently provided via private sources alone. Where undertakings would cease or downsize operations without such solvency support and when ceasing or downsizing operations would threaten energy markets or other markets which are of systemic importance for the economy (or for the security and resilience of the internal market), such solvency support might be considered compatible based on Article 107(3)(b) TFEU.
- (37) The Commission considers the following general principles as particularly relevant in the required case-by-case assessment outlined in point 36 above:
- a. the aid must be necessary, appropriate and proportionate<sup>43</sup> to avoid a sudden exit from the market of such undertakings and must in any case not exceed the minimum needed to ensure its viability;
  - b. a company belonging to or being taken over by a larger business group is not eligible for aid, except where it can be demonstrated that the company's difficulties are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. In such cases, a substantial contribution by the group to the costs of the solvency measure will typically be required;
  - c. state aid must be granted on terms that afford the State a reasonable remuneration such as an appropriate share of future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses, including foreseeable losses without the aid measure, have been accounted for;

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

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

- d. where aid takes the form of subordinated debt or other hybrid capital instruments, the overall remuneration of such instruments must adequately factor in the characteristics of the instrument chosen, including its level of subordination and all modalities of payment;
  - e. appropriate competition measures in line with the principles set out in the 2014 Rescue and Restructuring Guidelines<sup>44</sup> will be necessary. Based on the specificities of each potential case and the relevant competitive landscape, divestments of assets may also be required as a compensatory measure. Furthermore, behavioural measures, including commitments ensuring an effective ban on bonus payments or other variable payments, dividend payments, and acquisitions will be required;
  - f. The Commission may require the Member State to provide, also at a time later than the Commission decision, an assessment of the long-term viability of the beneficiary accompanying the notification or at a later date. The Member State must undertake, where considered appropriate by the Commission after examining such assessment, to notify within a period of time determined by the Commission, a restructuring plan as set out in the Rescue and Restructuring Guidelines for approval by the Commission.
- (38) Member States are invited to consider, in a non-discriminatory way, setting requirements related to environmental protection or security of supply for granting aid under section 2.4 and 2.8 of this Communication. This could, for example, take the following forms:<sup>45</sup>
- a. Requiring the beneficiary to meet a certain share of energy consumption needs by renewable energies, *e.g.* via power purchasing agreements or direct investments in energy generation from renewable energies;
  - b. Requiring investments in energy efficiency, reducing the energy consumption relative to economic output *e.g.* by reduced consumption for production processes, heating or transportation, in particular through measures implementing recommendations from energy audits carried out pursuant to Article 8 (2) or (4) and Annex VI of Directive 2012/27/EU;
  - c. Requiring investments to reduce or diversify natural gas consumption, *e.g.* by electrification measures using renewable energy sources or circular solutions such as the re-use of waste gases;
  - d. Requiring flexibilisation of investments, to facilitate better adaptations of business processes to price signals on electricity markets.
- (39) Member States may also grant aid to make good the damage caused by exceptional occurrences under Article 107(2)(b) TFEU. Such State aid aimed at mitigating damage directly caused by the current and exceptional occurrences of the Russian aggression

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

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

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

- (40) Damage directly caused by mandatory reductions in natural gas or electricity consumption which may have to be imposed by Member States can be assessed under Article 107(2)(b) TFEU, provided there is no overcompensation.
- (41) Member States must notify such aid measures and the Commission will assess them directly under Article 107(2)(b) TFEU. Such aid may be granted to undertakings in difficulty.
- (42) In line with Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas<sup>46</sup>, Member States may consider appropriate measures to incentivise voluntary reductions in natural gas demand. Where Member States envisage introducing such incentives in the context of the current crisis, the Commission will assess such measures directly under Article 107(3)(b) TFEU. While this will require a case-by-case assessment, the Commission considers the following elements to be particularly relevant:
- a. the use of a competitive process based on transparent criteria to contract volumes for voluntary demand reduction;
  - b. the absence of any formal restrictions to cross-border trade or flows;
  - c. the limitation of the incentives concerned to demand reductions in the future that go beyond those that the beneficiary would have undertaken regardless of the measure;
  - d. an immediate reduction in aggregate final gas demand in the Member State concerned while avoiding a mere shift in demand for natural gas.
- (43) Member States may also consider measures to incentivise the filling of gas storage facilities to the extent that the market does not provide incentives to do so adequately. Where Member States envisage granting incentives for the filling of gas storage facilities in the context of the current crisis, the Commission will assess them directly under Article 107(3)(b) TFEU<sup>47</sup>. While this will require a case-by-case assessment, the Commission considers the following elements as particularly relevant:
- a. the use of a competitive process based on transparent criteria to minimise the aid;
  - b. the absence of any restrictions to cross-border trade or flows;
  - c. the presence of safeguards to avoid overcompensation;

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

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

- d. the compliance with the obligations and conditions for filling and incentivizing gas storage set out in Article 6a to Article 6d of Regulation (EU) 2017/1938<sup>48</sup>, in particular the conditions for support measures set out in Article 6b, paragraphs (2) and (3).
- (44) The Commission will consider on a case-by-case basis possible necessary, proportionate and appropriate aid, in line with the Commission Communication ‘Save gas for a safe winter’<sup>49</sup> and the national gas security of supply emergency plans, in order to adapt facilities that will contribute to replace gas, for a limited period of time, with another more polluting carbon fuel. Any such alternative carbon fuel must have the lowest possible emissions content, while the aid should be subject to energy efficiency efforts and must avoid lock-in effects beyond the crisis, in line with EU climate objectives. Such measures can be aimed at both pre-emptively reducing the consumption of gas or to respond to mandatory reductions in natural gas demand, unless otherwise compensated.<sup>50</sup>
- (45) In view of the challenges to transport goods to and from Ukraine, the Commission will consider on a case-by-case basis possible aid for insurance or reinsurance regarding transport of goods to and from Ukraine. Among other things, Member States will need to show that the insurance or reinsurance is not available at all or at rates which are substantially higher than before Russia's invasion of Ukraine.
- (46) The transport of refugees and humanitarian material does not fall in principle under EU State aid rules, as long as the State is acting in the exercise of public powers (as opposed to carrying out an economic activity) and as long as the transport services are not purchased at a level above the market price.
- (47) Aid granted by Member States under this Communication to undertakings, which is channelled through credit institutions as financial intermediaries, shall benefit those undertakings directly. However, it may confer an indirect advantage on the financial intermediaries. Nevertheless, under the safeguards of sections 2.2 and 2.3, such indirect advantages do not have the objective to preserve or restore the viability, liquidity or solvency of the credit institutions. As a result, such aid would not be qualified as extraordinary public financial support under Directive 2014/59/EU of the European Parliament and of the Council (the Bank Recovery and Resolution Directive - BRRD)<sup>51</sup> or under Regulation (EU) 806/2014 of the European Parliament and of the Council (the Single Resolution Mechanism - SRM Regulation)<sup>52</sup>, and would not be assessed under the State aid rules applicable to the banking sector<sup>53</sup>.

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

<sup>49</sup> COM(2022) 360 final, 20.7.2022.

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

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

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

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



- (48) Aid granted by Member States to credit institutions or other financial institutions under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the current crisis or aid granted by Member States to credit institutions or other financial institutions under section 2.4 of this Communication, which do not have the objective to preserve or restore the viability, liquidity or solvency of an institution or entity would not be qualified as extraordinary public financial support under the BRRD nor under the SRM Regulation, and would also not be assessed under the State aid rules applicable to the banking sector<sup>54</sup>.
- (49) If due to the current crisis credit institutions would need extraordinary public financial support (see Article 2(1)(28) BRRD and Article 3(1)(29) SRM Regulation) in the form of liquidity, recapitalisation or an impaired asset measure, it will have to be assessed whether the measure meets the conditions of Article 32(4)(d) (i), (ii) or (iii) of the BRRD and Article 18(4)(d)(i), (ii) or (iii) of the SRM Regulation. Where the latter conditions are fulfilled, the credit institution receiving such extraordinary public financial support would not be deemed to be failing-or-likely-to-fail.
- (50) To the extent such measures address problems linked to the aggression against Ukraine by Russia and its direct and indirect effects, they would be deemed to fall under point 45 of the 2013 Banking Communication<sup>55</sup>, which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.
- (51) Aid granted under this Communication shall not be conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. Such condition would appear to be harmful to the internal market. Without prejudice to the specific safeguards included in section 2.8 of this Communication, this is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (52) Aid under this Communication shall not be granted to undertakings under sanctions adopted by the EU, including but not limited to:
- a. persons, entities or bodies specifically named in the legal acts imposing those sanctions;
  - b. undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or
  - c. undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

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

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

<sup>55</sup> As defined in footnote 53.

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

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

- (54) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid ‘to remedy a serious disturbance in the economy of a Member State’. In this context, the Union courts have ruled that the disturbance must affect the whole or an important part of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to make a strict interpretation of any exceptional provision such as Article 107(3)(b) TFEU<sup>56</sup>. That interpretation has been consistently applied by the Commission in its decision-making<sup>57</sup>.
- (55) The Commission considers that the aggression against Ukraine by Russia and its direct and indirect effects, including the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods. Those effects taken together have caused a serious disturbance of the economy in all Member States. Supply chain disruptions and increased uncertainty have direct or indirect effects that affect many sectors. In addition, rising energy prices affect virtually every economic activity in all Member States. The Commission considers accordingly, that a wide range of economic sectors in all Member States are affected by a serious economic disturbance. On that basis, the Commission considers that it is appropriate to lay down the criteria for the assessment of State aid measures that Member States may take to remedy that serious disturbance.
- (56) State aid is in particular justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine and its direct and indirect effects, including the sanctions

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

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

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

- (57) The Commission sets out in this Communication the criteria for the compatibility assessment it will apply in principle to the aid granted by Member States in this context under Article 107(3)(b) TFEU. Member States must therefore show that the State aid measures notified to the Commission and falling within the scope of this Communication are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned and that all the requirements of this Communication are fulfilled.
- (58) State aid measures notified and assessed under this Communication are intended to support undertakings active in the EU that are affected by the Russian military aggression and/or its consequences. The aid measures may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and must be in full compliance with the anti-circumvention rules of the applicable regulations<sup>58</sup>. In particular, it must be avoided that natural persons or entities subject to the sanctions benefit directly or indirectly from any such measures<sup>59</sup>.
- (59) State aid measures falling within the scope of this Communication may be cumulated with one another in line with the requirements in the specific sections of this Communication. State aid measures covered by this Communication may be cumulated with aid under de minimis Regulations<sup>60</sup> or with aid under Block Exemption Regulations<sup>61</sup> provided the provisions and cumulation rules of those Regulations are respected. State aid measures covered by this Communication may be cumulated with aid granted under the COVID-19 Temporary Framework<sup>62</sup>, provided

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

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

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

<sup>61</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation); Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, (OJ L 193, 1.7.2014, p. 1); and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

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

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

## 2. TEMPORARY STATE AID MEASURES

### 2.1. Limited amounts of aid

- (60) Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary limited amounts of aid to undertakings affected by the Russian aggression against Ukraine and/or by its direct or indirect effects can be an appropriate, necessary and targeted solution during the current crisis.
- (61) The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met (the specific provisions for the primary agriculture, the fishery and aquaculture sectors are set out in point 62):
- a. The overall aid does not exceed EUR 2 million per undertaking per Member State at any given point in time<sup>63</sup>. The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees<sup>64</sup> loans<sup>65</sup> and equity provided the total nominal value of such measures does not exceed the overall cap of EUR 2 million per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charges;
  - b. the aid is granted on the basis of a scheme with an estimated budget;
  - c. the aid is granted by 31 December 2023<sup>66</sup>;
  - d. the aid is granted to undertakings affected by the crisis;
  - e. the aid granted to undertakings active in the processing and marketing of agricultural products<sup>67</sup> is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products

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

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

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

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

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

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

- (62) By way of derogation from point 61(a), the following specific conditions apply to aid granted to undertakings active in the primary production of agricultural products, fishery and aquaculture sectors, in addition to the conditions of point 61(b) to (d):
- a. the overall aid does not at any point in time exceed EUR 250 000 per undertaking active in the primary production of agricultural products per Member State and EUR 300 000 per undertaking active in the fishery and aquaculture sectors per Member State;<sup>68</sup> the aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees<sup>69</sup>, loans<sup>70</sup> and equity provided the total nominal value of such measures does not exceed the overall relevant cap of EUR 250 000 or EUR 300 000 per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charge;
  - b. aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market;
  - c. aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Regulation (EU) No 717/2014<sup>71</sup>.
- (63) Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 61(a) and 62(a), the Member State concerned must ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 million is not exceeded per undertaking per Member State. Where an undertaking is active exclusively in the sectors covered by point 62(a) the overall maximum amount of EUR 300 000 should not be exceeded per undertaking per Member State.
- (64) Measures granted under this Communication in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2024 and the conditions in this section are complied with.

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

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

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

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

## 2.2. Liquidity support in the form of guarantees

- (65) In order to ensure access to liquidity to undertakings affected by the current crisis, public guarantees on loans for a limited period and loan amount can be an appropriate, necessary and targeted solution during the current circumstances<sup>72</sup>.
- (66) For the same underlying loan principal, guarantees granted under this section may not be cumulated with aid granted under section 2.3 of this Communication and vice versa or with aid granted under sections 3.2 or 3.3 of the COVID-19 Temporary Framework. Guarantees granted under this section may be cumulated for different loans provided the overall loan amount per beneficiary does not exceed the ceilings set out in point 67(e) of this Communication. A beneficiary may benefit in parallel from multiple measures under this section provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 67(e).
- (67) The Commission will consider such State aid in the form of public guarantees as compatible with the internal market on the basis of Article 107(3)(b) TFEU provided:
- Public guarantees are provided on new individual loans made to undertakings<sup>73</sup>;
  - Guarantee premiums are set per individual loans at a minimum level, which shall increase progressively as the duration of the guaranteed loan increases, as set out in the following table:

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

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

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

<sup>73</sup> These individual loans cannot be granted to credit institutions or other financial institutions.

- e. The overall amount of loans per beneficiary, for which a guarantee is granted under this section, shall not exceed:
- i. 15 % of the beneficiary's average total annual turnover over the last three closed accounting periods <sup>74</sup> ;
  - ii. 50 % of energy costs over the 12 months preceding the month when the application for aid is submitted <sup>75</sup> ; or
  - iii. upon appropriate justification to be provided by the Member State to the Commission for its assessment (for example in connection with the challenges faced by the beneficiary during the current crisis)<sup>76</sup>, the amount of the loan may be increased:
    - to cover the liquidity needs from the moment of granting for the coming 12 months for SMEs<sup>77</sup> and for the coming 6 months for large enterprises;
    - for large enterprises that need to provide financial collaterals for trading activities on energy markets, to cover liquidity needs derived from these activities from the moment of granting for the next coming 12 months;
    - The liquidity needs should be established through self-certification by the beneficiary<sup>78</sup>;
    - The liquidity needs already covered by aid measures under the COVID-19 Temporary Framework cannot be covered by measures adopted under this Communication;
- f. The duration of the guarantee is limited to maximum six years, unless modulated according to point 67(c), and the guarantee may not exceed:

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

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

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

<sup>77</sup> As defined in Annex I to the General Block Exemption Regulation.

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

- i. 90 % of the loan principal where losses are sustained proportionally and under same conditions by the credit institution and the State; or
  - ii. 35 % of the loan principal, where losses are first attributed to the State and only then to the credit institutions (*i.e.* a first-loss guarantee); and
  - iii. in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally;
- g. Upon appropriate justification to be provided by the Member State and by derogation from points 67(a), 67(e), 67(f) and 67(h), the public guarantee can be provided as unfunded financial collateral<sup>79</sup> to central counterparties or clearing members to cover new liquidity needs derived from the need to provide financial collaterals for cleared trading activities on energy markets for energy undertakings. The coverage for these unfunded guarantees may exceptionally exceed 90%. For these unfunded guarantees, the Member State has to:
  - i. if the guarantee coverage exceeds 90%, demonstrate the need for such higher coverage, based on robust and specific evidence and commit to validate and regularly monitor that final beneficiaries are not able to meet these liquidity needs through other sources of internal or external financing, including other aid under this Communication;
  - ii. justify the amount of the guarantees, which in any case may not exceed the amount to cover the liquidity needs for the coming 12 months that are derived from the need to provide financial collaterals for cleared trading activities on energy markets. Member States have to review these needs on a regular basis;
  - iii. justify the period for which the guarantee is granted, which has to be limited to 31 December 2023 and in any case does not exceed the period where such guarantees are considered as highly liquid collateral according to the Commission Delegated Regulation (EU) 2022/2311 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements<sup>80</sup>;
  - iv. demonstrate how the conditions for the mobilisation of the guarantee will sufficiently address moral hazard concerns regarding the beneficiary and financial intermediary. In particular, this concerns the condition on the recovery from the final beneficiary of the guaranteed amounts, where the Member State's claims on the final beneficiary's assets have to rank at the same or higher priority level as the final beneficiary's other outstanding senior debt and loans;

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

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



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

### **2.3. Liquidity support in the form of subsidised loans**

- (68) In order to ensure access to liquidity to undertakings affected by the current crisis, subsidised interest rates for a limited period and loan amount may be an appropriate, necessary and targeted solution during the current circumstances.
- (69) For the same underlying loan principal, loans granted under this section shall not be cumulated with aid granted under section 2.2 of this Communication and vice-versa. Loans and guarantees granted under this Communication may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 67(e) or in point 70(e). A beneficiary may benefit in parallel from multiple subsidised loans under this section provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 70(e).
- (70) The Commission will consider State aid in the form of subsidised loans in response to the current crisis as compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided the following conditions are met:
  - a. The loans are not granted to credit institutions or other financial institutions;
  - b. The loans may be granted at reduced interest rates, which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission<sup>81</sup>) available

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

either on 1 October 2022<sup>82</sup> or applicable at the moment of granting the support, plus the credit risk margins as set-out in the table below<sup>83</sup>

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

- c. As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby the loan maturity and the level of credit risk margins may be modulated, for instance, a flat credit risk margin may be used for the entire duration of the loan, if it is higher than the minimum credit risk margin for the 1<sup>st</sup> year for each type of beneficiary, as adjusted according to the loan maturity under this paragraph<sup>86 87</sup>;
- d. The loan contracts are signed by 31 December 2023 and are limited to maximum six years, unless modulated according to point 70(c);
- e. The overall amount of the loans per beneficiary shall not exceed:
- 15 % of the beneficiary's average total annual turnover over the last three closed accounting periods<sup>88</sup> ; or
  - 50 % of energy costs over the 12 months preceding the month when the application for aid is submitted<sup>89</sup> ;
  - with appropriate justification provided by the Member State to the Commission (for example in connection with the challenges faced by the

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

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

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

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

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

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

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

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

beneficiary during the current crisis)<sup>90</sup>, the amount of the loan may be increased:

- to cover the liquidity needs: from the moment of granting for the coming 12 months for SMEs<sup>91</sup> and for the coming 6 months for large enterprises;
- for large enterprises that need to provide financial collaterals for trading activities on energy markets, to cover the liquidity needs derived from these activities from the moment of granting for the next coming 12 months;
- The liquidity needs should be established through self-certification by the beneficiary<sup>92</sup>;
- The liquidity needs already covered by aid measures under the COVID-19 Temporary Framework shall not be covered by the current Communication;

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

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

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

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

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

<sup>91</sup> As defined in Annex I to the General Block Exemption Regulation.

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

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

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

- a. The aid is granted by 31 December 2023;<sup>93</sup>
- b. The aid may be granted in the form of direct grants, tax<sup>94</sup> and payment advantages or other forms such as repayable advances, guarantees<sup>95</sup>, loans<sup>96</sup> and equity provided the total nominal value of such measures does not exceed the applicable aid intensity and aid ceilings. All figures used must be gross, that is, before any deduction of tax or other charge;
- c. Aid granted in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2024;
- d. The aid is granted on the basis of a scheme with an estimated budget. Member States may limit the aid to activities that support specific economic sectors of particular importance to the economy or to the security and resilience of the internal market, taking into account, for example, the criteria for prioritising critical non-protected customers in the “Save gas for a safe winter” Communication<sup>97</sup>. However, such limits need to be designed broadly and not lead to an artificial limitation of potential beneficiaries;
- e. For the purposes of this section, eligible costs are calculated based on the consumption of natural gas (including as feedstock), electricity, and heating and cooling<sup>98</sup> directly produced from natural gas and electricity procured by the beneficiary<sup>99</sup>.

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

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

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

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

<sup>97</sup> COM/2022/360 final, 20.7.2022.

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

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

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

Where:

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

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

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

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

q is the quantity procured from external suppliers and consumed by the beneficiary as a final consumer<sup>100</sup>. It can be set by a Member State as either:

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

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

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

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

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

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

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

- b. For beneficiaries qualifying as ‘energy-intensive businesses’<sup>101</sup> the overall aid per beneficiary may be increased to a maximum of 65% of the eligible costs and the overall aid per undertaking per Member State may not exceed EUR 50 million at any given point in time. The beneficiary must in addition show that it has either a reduction in EBITDA<sup>102</sup> (excluding aid) of at least 40% in the eligible period compared to the reference period, or a negative EBITDA (excluding aid) in the eligible period;
- c. For beneficiaries qualifying as ‘energy-intensive businesses’ active in one or more sectors or sub-sectors listed in Annex I<sup>103</sup>, the overall aid per beneficiary may be increased to a maximum of 80% of the eligible costs and the overall aid per undertaking per Member State may not exceed EUR 150 million at any point in time. The beneficiary must in addition show that it has either a reduction in EBITDA (excluding aid) of at least 40% in the eligible period compared to the reference period, or a negative EBITDA (excluding aid) in the eligible period;
- d. For aid granted under points 73(a), 73(b) and 73(c), the beneficiary’s EBITDA in the eligible period, including the overall aid, may not exceed 70% of its EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0.
- (74) Under this section, the granting authority may make an advance payment to the beneficiary. When doing so, the granting authority may rely on estimations of the eligibility criteria in this section provided that the aid ceilings in this section are respected. The granting authority shall establish a process to verify the relevant eligibility requirements and aid ceilings ex-post on the basis of actual data and claw back any aid payments that do not meet the eligibility criteria or that exceed the aid ceilings no later than six months after the eligible period has ended.

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

- (75) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, it is essential in the context of the current crisis and the REPowerEU Plan<sup>104</sup> to accelerate and expand the availability of renewable energy in a cost-effective way with a view to quickly reducing dependency on fossil fuels imports, accelerate the energy

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

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

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

<sup>104</sup> COM/2022/230 final, 18 May 2022.

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

- (76) The faster rollout of renewable energy and energy storage may require complementary investments in energy infrastructure, including grid expansion. In line with the Notion of Aid Notice<sup>105</sup>, support to energy infrastructure within the framework of a legal monopoly is not subject to State aid rules. In the energy sector, this is particularly relevant for those Member States where the construction and operation of certain infrastructures is exclusively reserved by law for the Transmission System Operator or Distribution System Operator.

*2.5.1. Investment aid for accelerating the rollout of renewable energy and for energy storage*

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

a. the aid is granted for one of the following:

- (i) investments for the production of energy from renewable sources as defined in Article 2 point (1) of Directive (EU) 2018/2001<sup>106</sup>, including the production of renewable hydrogen and renewable hydrogen-derived fuels but excluding the production of electricity from renewable hydrogen;
- (ii) investments in electricity storage<sup>107</sup> and thermal storage<sup>108</sup> (also in combination with one of the other types of investments covered by this section);

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

<sup>106</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

<sup>107</sup> Electricity storage means deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy.

<sup>108</sup> Thermal storage means deferring the final use of thermal energy to a moment later than when it was generated, or the conversion of electrical or thermal energy into a form of energy which can be stored, the storing of such energy, and, where appropriate, the subsequent conversion or reconversion of such energy into thermal energy for final use (i.e., heating or cooling).

- (iii) investments in storage for renewable hydrogen, biofuels, bioliquids, biogas (including biomethane) and biomass fuels that obtains at least 75 % of its content from a directly connected renewable hydrogen, biofuels, bioliquids, biogas or biomass fuels production facility, on an annual basis;
- b. the aid is granted on the basis of a scheme with an estimated capacity volume and budget;
- c. the support schemes may be limited to one or several technologies covered in point 77(a) but must not include any artificial limitation or discrimination, (including in the award of licences, permits or concessions when they are required);
- d. the aid is granted by 31 December 2025. With the exception of offshore wind technologies, the installations must be completed and be in operation within 36 months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met;
- e. the aid is granted in the form of direct grants, repayable advances, loans<sup>109</sup>, guarantees<sup>110</sup> or tax advantages including tax credits;
- f. the aid amount is either:
  - (i) determined through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding and undersubscription<sup>111</sup>. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO<sub>2</sub> reduced) or aid per unit of energy output or capacity installed; or
  - (ii) administratively set by the Member State on the basis of data on the investment cost of each supported project;
- g. aid for solar photovoltaic, onshore and offshore wind, and hydropower installations shall be granted only in a competitive bidding process in line with point 77(f)(i).
- h. in derogation from point 77(g) above, a competitive bidding process is not mandatory for solar photovoltaic, onshore and offshore wind, and hydropower installations when the aid granted per undertaking per project does not exceed EUR 30 million and the supported projects are small projects that are defined as:
  - (i) projects with installed capacity equal or below 1MW; or

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

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

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



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

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

- i. the aid intensity shall not exceed:
  - (i) 100% of the total investment costs when the aid is set in a competitive bidding process on the basis of point 77(f)(i); or
  - (ii) 45% of the total investment costs when the aid is administratively set on the basis of point 77(f)(ii); the aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings;
- j. where the aid is granted for the production of renewable hydrogen or for the production of renewable hydrogen-derived fuels<sup>112</sup>, the Member State must ensure that the hydrogen and the hydrogen-derived fuels are produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- k. where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts;
- l. aid shall be granted with respect to newly installed or repowered capacities<sup>113</sup>. The aid amount shall be independent from the energy output. In case of repowered capacities, only the additional costs in relation to the repowered capacity are eligible for aid;
- m. aid under this section may be cumulated with any other State aid, except for aid under section 2.5.2 of this Communication, or with centrally managed funds, as long as those measures concern different identifiable eligible costs. Aid may be cumulated with State aid, except for aid under section 2.5.2 of this Communication, or with centrally managed funds in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the applicable aid intensity set out in point 77(i)<sup>114</sup>;

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

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

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

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

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

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

- a. the aid is granted for one of the following:
  - (i) production of energy from renewable sources as defined in Article 2 point (1) of Directive (EU) 2018/2001, including the production of renewable hydrogen and renewable hydrogen-derived fuels but excluding the production of electricity from renewable hydrogen;
  - (ii) operation of electricity storage<sup>115</sup> and thermal storage<sup>116</sup> (also in combination with one of the other types of investments covered by this section);
  - (iii) operation of storage for renewable hydrogen, biofuels, bioliquids, biogas (including biomethane) and biomass fuels that obtains at least 75% of its content from a directly connected renewable hydrogen, biofuels, bioliquids, biogas or biomass fuels production facility, on an annual basis;

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<sup>115</sup> As defined in footnote 107.

<sup>116</sup> As defined in footnote 108.

- b. the aid is granted on the basis of a scheme with an estimated capacity or output volume and budget;
- c. the support schemes may be limited to one or several technologies covered in point 78 (a) but must not include any artificial limitation or discrimination (including in the award of licences, permits or concessions when they are required);
- d. the aid is granted by 31 December 2025. With the exception of offshore wind technologies, the installations must be completed and be in operation within 36 months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met;
- e. the aid is granted in the form of two-way contracts for difference<sup>117</sup>, in relation to the energy output of the installation and with a contract duration no longer than 20 years after the aided installation starts operations<sup>118</sup>;
- f. the aid amount is determined either:
  - (i) through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding and undersubscription<sup>119</sup>. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO<sub>2</sub> reduced) or aid per unit of energy output or capacity; or
  - (ii) with the strike price administratively set by the competent energy regulatory authority<sup>120</sup> to cover expected net costs, including the estimated WACC, and taking into account all main revenues and any aid already received;
- g. the aid for the production of electricity from solar photovoltaic, onshore and offshore wind, and hydropower shall be granted only in a competitive bidding process in line with point 78(f)(i);
- h. in derogation from point 78(g) above, a competitive bidding process is not mandatory for the production of electricity from solar photovoltaic, onshore and

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

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

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

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

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

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

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

- i. the aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative<sup>121</sup>;
- j. where the aid is granted for the production of renewable hydrogen or for the production of renewable hydrogen-derived fuels<sup>122</sup>, the Member State must ensure that the hydrogen and the hydrogen-derived fuels are produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- k. where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts;
- l. the aid shall be granted with respect to newly installed or repowered capacities<sup>123</sup>;
- m. aid under this section may be cumulated with any other State aid or with centrally managed funds, as long as those measures concern different identifiable eligible costs. Aid may be cumulated with State aid or with centrally managed funds in relation to the same eligible costs, partly or fully overlapping, only if such

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

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

<sup>123</sup> As defined in footnote 113.

cumulation does not result in exceeding 100% of the expected net costs as defined in point 78(f)(ii)<sup>124</sup>;

- n. aid may be granted for installations for which works started as of 9 March 2023, with the exception of investments eligible under the previous Temporary Crisis Framework for which works may have started as of 20 July 2022; for projects started before 9 March 2023, or before 20 July 2022 for investments eligible under the previous Temporary Crisis Framework, aid may be granted if it is necessary to significantly accelerate or widen the scope of the investment. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid;
  - o. the aid must induce the beneficiary to undertake an activity, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law;
  - p. the Member State must ensure compliance with the ‘do no significant harm’ principle.
- (79) The Commission will consider aid for increasing the maximum electricity generation capacity of existing installations while not undertaking further investments as compatible with the internal market on the basis of Article 107(3)(c) TFEU provided the following conditions are met:
- a. the existing installation is connected to the grid before 1 October 2022 and benefitted from aid approved by the Commission under Article 107(3)(c) TFEU or exempted from notification;
  - b. the aid is necessary to increase the maximum capacity of existing installations so that their capacity is increased by up to 1 MW per installation or equivalent while not undertaking further investments;
  - c. the aid is granted by 31 December 2023 and the eligible period for support under the aid measure shall end by 31 December 2024;
  - d. the aid complies with the requirements laid down in points 78(a), 78(b), 78(c), 78(e), 78 (i) and 78(j);
  - e. the aid under this measure must not be cumulated with other aid supporting the same additional capacity.

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<sup>124</sup> If the Member State allows for such a cumulation, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point.

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

- (80) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, it is essential in the context of the current crisis and the REPowerEU Plan to facilitate investments in the decarbonisation of industrial activities with a view to quickly reducing dependency on fossil fuels imports. Accelerating electrification and energy efficiency measures in industry, as well as introducing technologies using renewable and electricity-based hydrogen fulfilling the conditions of point 81(i) or renewable hydrogen-derived fuels fulfilling the conditions of point 81(h) form part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels.
- (81) The Commission will consider compatible with the internal market on the basis of Article 107(3)(c) TFEU aid for investments leading to (i) a substantial reduction of greenhouse gas emissions from industrial activities currently relying on fossil fuels as energy source or feedstock, or (ii) a substantial reduction of energy consumption in industrial activities and processes, provided that all the following conditions are met:
- a. the aid is granted on the basis of a scheme with an estimated budget;
  - b. the maximum individual aid amount that may be granted per undertaking must, in principle, not exceed either 10 % of the total budget available for such a scheme or EUR 200 million. Upon appropriate justification to be provided by the Member State to the Commission for its assessment, the Commission may accept schemes that provide for the granting of individual aid amounts exceeding 10 % of the total budget available for the scheme;
  - c. the aid is granted in the form of direct grants, repayable advances, loans<sup>125</sup>, guarantees<sup>126</sup> or tax advantages including tax credits;
  - d. the investment<sup>127</sup> must enable the beneficiary to do one or both of the following:
    - (i) reduce by at least 40 % compared to the situation before the aid, direct greenhouse gas emissions from its industrial installation currently relying on fossil fuels as energy source or feedstock, by means of the electrification of the production processes, or the switch to the use of renewable and electricity-based hydrogen fulfilling the conditions of points 81(g) and (i) or of renewable hydrogen-derived fuels fulfilling the conditions of point 81(h) to substitute fossil fuels; for the purposes of verifying the reduction of greenhouse gas emissions, also actual

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

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

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

emissions from the combustion of biomass is to be taken into account;<sup>128</sup>

- (ii) reduce by at least 20 % compared to the situation before the aid, energy consumption in industrial installations in relation to the aided activities;<sup>129</sup>
- e. for investments relating to activities covered by the Emission Trading System (ETS), the aid must lead to a reduction in the beneficiary installation's greenhouse gas emissions going below the relevant benchmarks for free allocation set out in Commission Implementing Regulation (EU) 2021/447<sup>130</sup>;
- f. the aid must not aim at financing an increase of the overall production capacity of the beneficiary. This is without prejudice to limited capacity increases resulting from technical necessity. This is presumed to be the case for capacity increases not exceeding 2 % compared to the situation before the aid;
- g. where the aid is granted for an industrial decarbonisation investment involving the use of renewable hydrogen, the Member State must ensure that the hydrogen used is produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- h. where the aid is granted for an industrial decarbonisation investment involving the use of renewable hydrogen-derived fuels, those fuels comply with the following cumulative requirements:
  - (i) they are liquid and gaseous fuels that derive from renewable hydrogen, the energy content of which is derived from renewable sources other than biomass;
  - (ii) they achieve lifecycle greenhouse gas emissions savings of at least 70% relative to a fossil fuel comparator of 94g CO<sub>2</sub>eq/MJ and
  - (iii) they have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.
- i. the aid can also be granted for an industrial decarbonisation investment involving the use of hydrogen produced from electricity in one of the following instances:

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

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

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

- (i) the hydrogen is produced only in hours in which the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electricity is consumed is a fossil-free electricity generation plant. Hydrogen produced in such hours and which has already been counted as renewable hydrogen within the meaning of point 81(g) cannot be counted a second time under this section;
  - (ii) alternatively, hydrogen is produced from electricity taken from the grid and the electrolyser produces hydrogen for a number of full load hours equal or lower than the number of hours in which the marginal price of electricity in the bidding zone was set by installations producing fossil-free electricity; hydrogen produced for a number of full load hours equal or lower than the number of hours in which the marginal price of electricity in the bidding zone was set by installations producing renewable electricity and which has already been accounted as renewable hydrogen within the meaning of point 81(g) cannot be counted a second time under this section;
  - (iii) alternatively, the Member State must ensure that the used electricity-based hydrogen achieves life-cycle greenhouse gas emissions savings of at least 70 % relative to a fossil fuel comparator of 94g CO<sub>2</sub>eq/MJ and that it originates from fossil-free sources. The method to compute the greenhouse gas emissions allocated to the electricity should not lead to an increased consumption of fossil fuel in line with REPowerEU objectives. Only the share of the produced hydrogen corresponding to the average share of electricity from fossil-free electricity generation plants, in the country of production, as measured two years before the year in question, can be used for the purpose of this section. The share of hydrogen produced in line with the present point corresponding to the average share of electricity from renewable electricity generation plants in the country of production, as measured two years before the year in question, cannot be counted a second time under this section to the extent that it has already been accounted for as renewable hydrogen within the meaning of point 81(g);
- j. the aid is granted by 31 December 2025 and is subject to the condition that the installation or equipment to be financed by the investment must be completed and be in operation within 36 months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met;
- k. the aid may be granted for investments for which works started as of 9 March 2023, with the exception of investments eligible under the previous Temporary Crisis Framework for which works may have started as of 20 July 2022; for projects started before 9 March 2023 or 20 July 2022 for investments eligible under the previous Temporary Crisis Framework, aid may be granted, if it is necessary to significantly accelerate or widen the scope of the investment. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid;



- l. the aid must not be granted for merely complying with applicable Union standards<sup>131</sup>;
- m. the aid must induce the beneficiary to undertake an investment, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law; it is deemed that beneficiaries would continue their activities without changes for investments referred to in point 81(d)(i) above;
- n. the eligible costs are the difference between the costs of the project referred to in point 81(d) and the cost savings or additional revenues, compared to the situation in the absence of the aid, over the lifetime of the investment. The scheme must be designed in a way that allows to address windfall profits, including in times of extremely high electricity or natural gas prices, by putting in place a claw-back mechanism defined ex ante. The aid intensity must not exceed 40 % of the eligible costs. The aid intensity may be increased by 10 percentage points for aid granted to medium sized undertakings and by 20 percentage points for aid granted to small undertakings. The aid intensity may also be increased by 15 percentage points for investments delivering a reduction of direct greenhouse gas emissions of at least 55 % or of energy consumption of at least 25 % compared to the situation prior to the investment<sup>132</sup>;
- o. as an alternative to point 81(n), the aid amount is determined through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex-ante and minimising the risk of strategic bidding. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO<sub>2</sub> reduced, or EUR per unit of energy saved). The budget related to the bidding process must be a binding constraint in that it can be expected that not all bidders will receive aid;
- p. as a further alternative to points 81(n) and (o), the eligible costs may correspond to the investment costs linked to the project referred to in point 81(d), in particular costs of equipment, machinery or installations needed to achieve the electrification, switch to hydrogen or hydrogen-derived fuels or energy efficiency improvement. In such a situation, the aid intensity must not exceed 60 % of the eligible costs for investments referred to under point 81(d)(i) other than electrification projects. For

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

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

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

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

## **2.7. Aid for additional reduction of electricity consumption**

- (82) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU and the possibilities set out in this Communication, temporary support might be needed to achieve the reduction of electricity consumption covered by Articles 3 and 4 of Regulation (EU) 2022/1854<sup>133</sup>. That support might help alleviate the exceptional increase in electricity prices by reducing consumption for more expensive electricity generation technologies (presently based on gas). Therefore, it is equally important to maintain incentives for existing electricity consumption reductions and to ensure consistency with the gas demand reduction targets laid down in Regulation (EU) 2022/1369<sup>134</sup>. In view of the differences across Member States, guidance is needed to ensure that flexibility is framed by criteria aimed at ensuring a level-playing field and the preservation of the integrity of the single market.
- (83) The Commission will consider compatible with the internal market on the basis of Article 107(3)(b) TFEU aid for reduction of electricity consumption, provided the following cumulative conditions are met:
- a. the aid must provide financial compensation only when such compensation is paid for additional electricity not consumed compared to the expected consumption ('counterfactual') in the hour concerned without the competitive bidding process referred in point 83(e) ('additional consumption reduction'). In order to determine the additional consumption reduction, different methodologies can be used. To ensure that aid is only granted for additional demand reduction, Member States should in general take into account incentives from higher energy prices, any incentives from other support payments and schemes, weather conditions, and gaming risks;

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

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

- b. the aid must be designed to primarily contribute to reaching an electricity consumption reduction target set in Articles 3 and 4 of Regulation (EU) 2022/1854<sup>135</sup>. If the aid is designed to go beyond the targets, the Member State must demonstrate the existence of additional benefits of the aid (for example, reduced energy system costs or reduced gas consumption), which are necessary<sup>136</sup> and proportionate to remedy the serious disturbance of the economy while preserving the internal market;
- c. the aid must be granted on the basis of a scheme with an estimated capacity volume and budget;
- d. aid may be granted in various forms including direct grants, loans<sup>137</sup> and guarantees<sup>138</sup>;
- e. the aid must be granted in a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding. If a risk of overcompensation is identified, aid must be designed in a way that allows addressing windfall profits, such as by putting in place a claw-back mechanism defined ex-ante;
- f. the competitive bidding process(es) should in principle be open to all possible ways to achieve additional consumption reduction, in particular:
  - i. consumers shifting or avoiding electricity consumption;
  - ii. behind-the-meter storage, to reduce consumption during peak hours (unless aid would not lead to any additional consumption reduction); and
  - iii. behind-the-meter electricity generation assets that do not use gas as fuel. Member States may choose to exclude generation based on other fossil fuels;
- g. with respect to point 83(f), schemes might be limited to one or several categories of beneficiaries in one of the following circumstances:
  - i. where differences in the characteristics (e.g. duration, frequency of activation) of the services that can be offered by potential beneficiaries are such that offers per MWh cannot be considered comparable;
  - ii. where Member States can demonstrate to the Commission that competition would not be unduly distorted; or
  - iii. to ensure timely implementation (e.g. by extending existing schemes);

In any case, the schemes must not include any artificial limitation or discrimination. In accordance with Article 17 of Directive (EU) 2019/944<sup>139</sup>,

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

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

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

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

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

- h. the eligibility criteria for participation in the competitive bidding process(es) must be transparent, objective and non-discriminatory. Beneficiaries must already have appropriate electricity metering<sup>140</sup> or commit to install it before delivering the additional consumption reduction. A minimum bid size requirement for beneficiaries may apply for reasons of administrative simplification; in this case, the minimum bid size must not be higher than 10MW and aggregation to reach the threshold must be allowed;
- i. to enable beneficiaries to accurately price their offers, clear and objective criteria must be defined and must describe when the beneficiary's additional consumption reduction will be activated. However, sufficient safeguards – for example some randomisation of activation – may need to be put in place to avoid creating gaming incentives such as the artificial inflation of counterfactuals;
- j. to avoid negative consequences on gas consumption, beneficiaries should commit that their additional electricity consumption reduction will not lead to increase their overall gas consumption. In addition, for aid reducing electricity consumption during peak hours, to deliver the benefits of moving electricity from peak to “off-peak” hours<sup>141</sup> while avoiding to hamper achieving the target to reduce overall electricity consumption, beneficiaries should commit not to consume more than 150% “off peak” of the compensated “peak” electricity consumption reduction;
- k. within the competitive bidding process, beneficiaries must be selected based on the lowest unit cost of additional consumption reduction (in EUR/MWh or equivalent<sup>142</sup>). Member States may introduce additional objective, transparent and non-discriminatory ranking criteria to promote greener technologies necessary to support the delivery of the Union's environmental protection objectives;
- l. the remuneration must be granted to each beneficiary based on the actual additional consumption reduction achieved (as opposed to the additional consumption reduction the beneficiary committed to achieve);
- m. the aid must not unduly distort the proper functioning of the internal market in electricity. Member States may open the aid to cross-border participation;

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

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

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

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

- n. the additional consumption reduction which is compensated must take place within the period of application of the relevant Article(s) of Regulation (EU) 2022/1854<sup>143</sup>, or in case of aid going beyond those targets, by 31 December 2023;
- o. cumulation with other State aid measures is possible, so long as overcompensation is avoided by ensuring for example that aid is granted through an open competitive bidding process. In any event, aid cannot be granted if it covers eligible costs that are already covered by other State aid measures.

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

- (84) In view of the need to accelerate the economic transition and overcome the current crisis, Member States may envisage supporting private investment to address the productive investment gap in sectors strategic for the transition towards a net-zero economy and provide incentives for their fast deployment also considering global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside the EEA.
- (85) The Commission will consider aid for investment projects with strategic importance for the transition towards a net-zero economy compatible with the internal market under Article 107(3)(c) TFEU provided the following conditions are met:
  - a. The aid is granted to incentivise:
    - i. the production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, electrolyzers, and equipment for carbon capture usage and storage (CCUS); or
    - ii. the production of key components designed and primarily used as direct input for the production of the equipment defined under (i); or
    - iii. the production or recovery of related critical raw materials necessary for the production of the equipment and key components defined in (i) and (ii) above;
  - b. the aid is granted on the basis of a scheme<sup>144</sup> with an estimated budget;
  - c. the aid is granted by 31 December 2025;
  - d. the beneficiary must apply for aid before the start of works<sup>145</sup> and must provide the required information in Annex II of this Communication to the Member State<sup>146</sup>.

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

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

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

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

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

- j. before granting the aid and on the basis of the information provided by the beneficiary in Annex II of this Communication and the commitments provided under point 85(k), the granting authority must verify the concrete risks of the productive investment not taking place within the EEA and that there is no risk of relocation within the EEA in the sense of point 85(k);
  - k. the aid may not be provided to facilitate relocation<sup>147</sup> of production activities between Member States. For this purpose, the beneficiary has to:
    - i. confirm that in the two years preceding the application for aid, it has not carried out a relocation to the establishment in which the aided investment is to take place; and
    - ii. commit not to carry out such relocation up to a period of two years after completion of the investment;
  - l. the aid may not be granted to undertakings in difficulty<sup>148</sup>;
  - m. the aid may be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules. Under no circumstances may the total aid amount exceed 100% of the eligible costs;
  - n. Member States may consider including in a non-discriminatory way requirements related to environmental protection such as those listed in point 37 of this Communication or related to social protection or employment conditions when notifying schemes under this point;
  - o. Member States must inform the Commission within 60 days from the moment of granting the aid, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary in Annex II to this Communication.
- (86) Exceptionally, by derogation from point 85(b) and on the basis of individual notifications, for the production of the relevant goods for the transition towards a net-zero economy as defined in point 85(a) of this Communication, the Commission may approve on the basis of Article 107(3)(c) TFEU individual aid up to the amount of subsidy<sup>149</sup>, which the beneficiary could demonstrably receive for an equivalent investment in a third country jurisdiction outside the EEA, provided the following conditions are met:

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

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

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

- a. The aid incentivises the beneficiary to locate the investment project or to trigger linked investment projects<sup>150</sup> necessary for the production of the relevant goods defined in point 85(a) either:
  - i. fully in an assisted area as defined in the applicable regional aid map; or
  - ii. in at least three EEA Member States where a significant part of the capital investment takes place in at least two assisted areas. An important part of such significant investment should take place in an 'a' area as defined in the applicable regional aid map(s);
- b. The aid is granted by 31 December 2025;
- c. The beneficiary must commit to use for the production of goods defined in point 85(a) of this Communication the latest commercially available state-of-the-art production technology from an environmental emissions perspective;
- d. The beneficiary must apply for aid before the start of works<sup>151</sup> and must provide the required information in Annex II of this Communication and supporting relevant documents to the Member State.<sup>152</sup> The beneficiary must provide solid evidence of subsidies it would credibly receive in a non-EEA jurisdiction for a similar project and must demonstrate that without the aid the planned investment would not take place in the EEA<sup>153, 154</sup>. In addition, the beneficiary must provide evidence that the aid does not create counter-cohesion effects<sup>155</sup>;

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

<sup>151</sup> As defined in footnote 145.

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

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

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

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



- e. The aid may not exceed the minimum amount needed to incentivise the aid beneficiary to locate the investment in the area concerned in the EEA (funding gap)<sup>156</sup>;
- f. The aid may not be provided to facilitate relocation<sup>157</sup> of production activities between Member States. When evaluating the notifiable measures, the Commission will request all necessary information to consider whether the State aid is likely to result in a substantial loss of jobs in existing locations within the EEA. In this situation, and if the investment enables the aid beneficiary to relocate an activity to the target area, if there is a causal link between the aid and the relocation, this constitutes a negative effect that is unlikely to be compensated by any positive effects;
- g. The beneficiary must commit to maintain the investment in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, no further aid may be awarded to replace that plant or equipment.
- h. the aid under this section may not be granted to undertakings in difficulty<sup>158</sup>.

### 3. MONITORING AND REPORTING

- (87) Member States must publish relevant information on each individual aid above EUR 100 000<sup>159</sup> granted under this Communication, and above EUR 10 000<sup>160</sup> in the primary agriculture and in the fisheries sectors, on the comprehensive State aid

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

<sup>157</sup> As defined in footnote 147.

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

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

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

website or Commission's IT tool<sup>161</sup> within 12 months from the moment of granting, except for aid granted under section 2.8 for which Member States will have to publish the relevant information within 6 months from the moment of granting.

- (88) For aid measures under section 2.4. of this Communication, when the overall aid per undertaking per Member State exceeds EUR 50 million, Member States must include in their schemes a requirement that the beneficiary must submit to the granting authority, within one year from the moment of granting the aid, a plan that specifies how the beneficiary will reduce the carbon footprint of its energy consumption or how it will implement any of the requirements related to environmental protection or security of supply described in point 37 of this Communication. This requirement applies as from 1 January 2023.
- (89) Member States must submit annual reports to the Commission<sup>162</sup>.
- (90) Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.
- (91) The Commission may request additional information regarding the aid granted, in particular, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.
- (92) In order to monitor the implementation of this Communication, the Commission may request Member States to provide aggregate information on the use of State aid measures to remedy the serious disturbance of the economy due to the current crisis.

#### **4. FINAL PROVISIONS**

- (93) The Commission applies this Communication from 9 March 2023. The Commission applies the provisions of this Communication to all measures notified as of 9 March 2023, as well as to measures notified prior to that date.
- (94) This Communication replaces the Temporary Crisis Framework adopted on 28 October 2022<sup>163</sup> ('previous Temporary Crisis Framework'). The previous Temporary Crisis Framework is withdrawn with effect from 9 March 2023. The previous Temporary Crisis Framework already replaced the Temporary Crisis Framework adopted on 23 March 2022<sup>164</sup> as amended on 20 July 2022<sup>165</sup>.
- (95) Overall, aid granted under sections 2.1 to 2.3 of the previous Temporary Crisis Frameworks and aid granted under the same respective sections of this

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

<sup>162</sup> OJ L 140, 30.4.2004, p. 1.

<sup>163</sup> OJ C 426, 9.11.2022, p. 1.

<sup>164</sup> OJ C 131I, 24.3.2022, p. 1.

<sup>165</sup> OJ C 280, 21.7.2022, p. 1.

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

- (96) In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid<sup>166</sup>, the Commission applies this Communication to non-notified aid if the aid is granted as of 9 March 2023.
- (97) In all other cases, the Commission will apply the rules laid down in the Framework in force when the aid was granted.
- (98) The Commission will review all sections under this Communication before 31 December 2023 on the basis of important competition or economic considerations, as well as the international developments. Where helpful, the Commission may also provide further clarifications on its approach to particular issues.
- (99) The Commission, in close cooperation with the Member States concerned, ensures swift assessment of measures upon clear and complete notification of measures covered by this Communication. Member States should inform the Commission of their intentions and notify plans to introduce such measures as early and comprehensively as possible. The Commission will provide guidance and assistance to Member States in this process.

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<sup>166</sup> OJ C 119, 22.5.2002, p. 22.

## **ANNEX I**

Particularly affected sectors and sub-sectors<sup>167</sup>

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

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

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

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

## **Annex II**

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

#### **1. Information about the aid beneficiary:**

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

#### **2. Information about the investment to be supported:**

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

#### **3. Information about the financing of the investment:**

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

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

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

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





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

Brussels, 9 March 2023

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

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

### Green Deal GBER amendment

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

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

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

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

In particular, the revised rules:

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

## Next steps

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

## Background

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

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

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

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

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

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

IP/23/1523

## Quotes:

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

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

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EUROPEAN  
COMMISSION

Brussels, 9.3.2023  
C(2023) 1712 final

ANNEX

**ANNEX**

*to the*

**COMMUNICATION TO THE COMMISSION**

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

## ANNEX

*to the*

### COMMUNICATION TO THE COMMISSION

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

THE EUROPEAN COMMISSION,

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

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

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Transparency of State aid is essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending. Given the importance of transparency and, in particular, to align the publication thresholds in Commission Regulation (EU) No 651/2014<sup>2</sup> with the new thresholds laid down in all recently revised Commission State aid Guidelines and Frameworks, the threshold above which the information referred to in Annex III on individual aid awards must be published should be set at EUR 100 000. This threshold should correspond to EUR 10 000 for beneficiaries active in primary agricultural production and for beneficiaries active in the fishery and aquaculture sector, other than those to which Section 2a applies, and EUR 500 000 for aid involved in financial products supported by the InvestEU fund under Section 16. For individual aid exceeding these thresholds, the information referred to in Annex III needs to be published within 6 months from the date the aid is granted. For aid not exceeding these thresholds, the publication of the information laid down in Article 9, paragraph 1, points (a) and (b) can take place at a later point in time.

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

<sup>2</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

- (2) To provide predicability and legal certainty for the implementation of the amendments to Regulation (EU) No 651/2014 introduced with this Regulation, in particular for State aid measures to support the green and digital transition, it is appropriate to extend the period of application of Regulation (EU) No 651/2014 by three years until 31 December 2026.
- (3) Where appropriate, adjustments to notification thresholds and aid amounts have been introduced to Sections under specific review as part of the current amendment, based on an assessment of market developments and the Commission's case practice. In light of the extended period of application of Regulation (EU) No 651/2014 since its adoption in 2014, in combination with current high inflation levels, it is appropriate to increase notification thresholds and maximum aid amounts also in Sections of Regulation (EU) No 651/2014 not subject to specific review. In that regard, the Commission considers that a general increase of 10% of notification thresholds and aid amounts for the remaining Sections of Regulation (EU) 651/2014 is appropriate in light of the time since their introduction and current inflation levels and will, therefore, not lead to competition distortions contrary to the common interest.
- (4) Following the adoption of the revised Guidelines on regional State aid for the period from 1 January 2022<sup>3</sup>, definitions and Articles related to regional aid in Commission Regulation (EU) No 651/2014 should be aligned to ensure consistency between the different sets of rules targeting the same objectives. Section 1 of Chapter III of Regulation (EU) No 651/2014 should also be adjusted to take into account changes in the market and in view of the Green deal<sup>4</sup> and the European Climate Law objectives set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council.<sup>5</sup> Operating aid to prevent and reduce depopulation should be extended to sparsely populated areas, in order to facilitate better support in areas facing demographic challenges. To facilitate the application of Regulation (EU) No 651/2014 for aided projects below EUR 50 million carried out by small and medium-sized enterprises ('SMEs'), the notification thresholds should be adjusted accordingly and clarified.
- (5) In line with the objectives of the SME Strategy for a sustainable and digital Europe<sup>6</sup>, the Commission would like to clarify that State aid granted for consultancy for SMEs may be granted in the form of vouchers, for instance to promote green consultancy services. Furthermore, when granting State aid, Member States may decide to apply simplified rules to SMEs with a view to reducing the administrative burden and facilitating the participation of SMEs in competitive bidding procedures.
- (6) According to the Communication on Shaping Europe's Digital Future and on a European Strategy for Data there is a need to ensure that digital solutions help Europe to pursue its own way towards a digital transformation that works for the benefit of people through respecting the European values. The New Industrial Strategy for Europe

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

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

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

<sup>6</sup> COM(2020) 103 final.

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

- (7) In order to speed up the implementation of certain innovative projects related to projects involving several Member States, it is appropriate to introduce higher notification thresholds and aid intensities for research and development projects delivering cross-border benefits in terms of effective collaborations and knowledge dissemination.
- (8) In light of the introduction of dedicated block exemptions for community-led local development ('CLLD'), designated as LEADER local development under the European Agricultural Fund for Rural Development, and European Innovation Partnership for agricultural productivity and sustainability ('EIP') Operational Group projects in Commission Regulation (EU) 2022/2472<sup>7</sup>, it is appropriate to, on the one hand, extend the scope of the current block exemption for CLLD projects under Regulation (EU) No 651/2014 beyond projects dedicated as LEADER and, on the other hand, to delete the block exemption for EIP projects under Regulation (EU) No 651/2014.
- (9) It is appropriate to include in the scope of Regulation (EU) No 651/2014 compatibility conditions for aid to microenterprises in the form of public interventions concerning the supply of electricity, natural gas or heat. Such measures must be in line with the applicable provisions of EU law when they qualify as public interventions in price setting. Such measures should neither discriminate between suppliers nor microenterprises and should result in a retail price above cost, at a level where effective competition between retailers can occur.
- (10) To mitigate the effects of the rise of energy prices following Russia's war of aggression against Ukraine, Council Regulation (EU) 2022/1854 exceptionally enables Member States to apply, on a temporary basis, measures of public intervention in price setting for the supply of electricity for SMEs, including obligations to supply below cost. Therefore, it is also appropriate to include in the scope of the Regulation (EU) No 651/2014 compatibility conditions for aid to SMEs in the form of temporary public interventions concerning the supply of electricity, gas or heat produced from natural gas, to mitigate the impact of price increases following Russia's war of aggression against Ukraine. Such measures should not discriminate between SMEs or suppliers or impose unfair costs on them. Suppliers should, therefore, be compensated for costs incurred supplying at regulated prices if the public intervention requires them to supply below cost. In order to avoid that such measures increase demand for electricity, natural gas or heat produced from natural gas or electricity, regulated prices should only cover a limited amount of consumption and should not result in an average price of supplies that is lower than the prices before the aggression against Ukraine.

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

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

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

- (15) Further to the adoption of the revised Guidelines on State aid to promote risk finance investments for the period as from 2022,<sup>9</sup> definitions and other legal provisions related to access to finance for SMEs in Regulation (EU) No 651/2014/EU should be aligned with the revised Guidelines to ensure consistency. SMEs are the backbone of Member States' economies, both in terms of employment and of economic dynamism and growth, and are therefore also central to the Union's economic development and resilience as a whole. They bring innovative solutions to address challenges like climate change, inefficient use of resources and loss of social cohesion, and they help spread this innovation supporting the green and digital transition and strengthening the Union's resilience or technological sovereignty. However, to be able to grow and unleash their full potential, SMEs need access to finance. Therefore, the Commission considers it appropriate to stimulate the creation of an efficient risk finance market, so that SMEs are able to access the necessary funding at each stage of their development. As long as such market is not yet fully established, aid for the access to finance for SMEs and start-ups addresses market failures or other relevant obstacles that prevent them from attracting the financing they require to develop to their full potential. SMEs, especially when they are young, or in new or high-technology sectors, are often unable to demonstrate their credit-worthiness to investors. The evaluation<sup>10</sup> of the relevant rules carried out in 2019 and 2020, has confirmed that those market failures or other relevant obstacles persist, a situation that is likely to be worsened by the COVID-19 pandemic and the consequences of the current political and economic situation in Europe due to the Russian military aggression against Ukraine. To further facilitate the deployment of such aid to ensure SMEs' growth prospects, the overall resilience of the Union's economy and to provide more clarity, the structure and scope of the provisions on risk finance has been revised. Projects eligible for support by the Innovation Fund may qualify for a more permissive access to finance for 'innovative enterprises' as defined in Article 2, point 80.
- (16) Further to the adoption of the Guidelines on State aid for climate, environmental protection and energy applicable as from 27 January 2022,<sup>11</sup> definitions and other legal provision in Regulation (EU) No 651/2014 related to aid in the fields of environmental protection, including climate protection, and energy should be aligned to ensure consistency between the different sets of rules targeting the same objectives. The scope of Section 7 of Regulation (EU) No 651/2014 should be adjusted to take into account changes in the market and the Green Deal and the European Climate Law objectives, as well as measures provided for in the Commission's REPowerEU plan to address the impacts of Russia's aggression against Ukraine and to mitigate any negative effects on the accelerated green transition, including the provisions introduced to amend Regulation (EU) No 651/2014 in 2021<sup>12</sup>. When designing their State aid measures, Member States can combine aid under different provisions of the GBER, provided that all the relevant conditions, including those on cumulation, are complied with.

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

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

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

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



- (17) Investment aid aimed at supporting the acquisition or the leasing of zero-emission vehicles or clean vehicles or the retrofitting of vehicles, allowing them to qualify as zero-emission vehicles or clean vehicles, contributes to the shift towards zero-emission mobility and to achieving the ambitious targets of the Green Deal, mainly the reduction of greenhouse gas emissions in the transport sector. In light of the experience gained by the Commission regarding State aid measures supporting clean mobility, it is appropriate to introduce specific compatibility conditions to ensure that the aid is proportionate and does not unduly distort competition by shifting demand away from cleaner alternatives. The scope of the provisions concerning investment aid for electric recharging and hydrogen refuelling infrastructure should be enlarged to also cover refuelling infrastructure supplying hydrogen that is not renewable, provided that a clear pathway towards decarbonisation of the hydrogen supplied exists. Moreover, aid for recharging and refuelling infrastructure should also be available for infrastructure that is not publicly accessible.
- (18) It is appropriate to include in the scope of Regulation (EU) No 651/2014 specific compatibility conditions for aid for hydrogen across sectors in line with the objectives of the Hydrogen strategy for a climate-neutral Europe<sup>13</sup> and for storage.
- (19) The provisions of Regulation (EU) No 651/2014 concerning operating aid for the promotion of energy from renewable sources should be expanded for renewable energy communities, in accordance with Directive (EU) No 2018/2001 of the European Parliament and of the Council<sup>14</sup>. With respect to investment aid, renewable energy communities, along different types of undertakings, can take advantage of the relevant provisions of Regulation (EU) No 651/2014. In this context, renewable and citizen energy communities as defined in Directive (EU) 2019/944 of the European Parliament and of the Council<sup>15</sup> may qualify as SMEs to the extent they comply with the requirements laid down in Annex I of Regulation (EU) No 651/2014.
- (20) It is appropriate to include in the scope of Regulation (EU) No 651/2014 compatibility conditions for investment aid for the rehabilitation of natural habitats and ecosystems, the protection and restoration of biodiversity and nature-based solutions for climate change adaptation and mitigation in line with the objectives of the Biodiversity Strategy for 2030<sup>16</sup>, the European Climate Law objectives set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council, the EU strategy for adaptation to climate change<sup>17</sup> and the Communication on Sustainable Carbon Cycles<sup>18</sup>. Those conditions

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

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

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

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

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

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

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

- (21) The provisions of Regulation (EU) No 651/2014 concerning investment aid for waste recycling and re-utilisation should be adapted and expanded to address developments in the market and, in accordance with the Circular Economy Action Plan<sup>19</sup>, to reflect the shift towards measures aimed at promoting resource efficiency and supporting the transition towards a circular economy. The replacement of primary raw materials or feedstock with secondary (re-used or recycled) or recovered raw materials or feedstock will reduce pressure on natural resources, create sustainable growth and jobs and will strengthen resilience.
- (22) It is necessary to include in the scope of Regulation (EU) No 651/2014 compatibility conditions for aid in the form of environmental tax or levy reductions. Environmental taxes or parafiscal levies are imposed in order to increase the costs of environmentally harmful behaviour, thereby discouraging such behaviour and increasing the level of environmental protection. Where environmental taxes or parafiscal levies could not be enforced without putting the economic activities of certain undertakings at risk, granting a more favourable treatment to some undertakings may allow to achieve a higher general level of contribution to the environmental taxes or parafiscal levies. Accordingly, in some circumstances, reductions in environmental taxes or levies can indirectly contribute to a higher level of environmental protection.
- (23) It is appropriate to apply the same conditions for aid in the form of reductions and exemptions in environmental taxes across all economic sectors unless special rules apply. Therefore, aid in the form of tax reductions for inland fishing and piscicultural works adopted by Member States pursuant to Article 15(1)(f) and Article 15(3) of Directive 2003/96/EC<sup>20</sup> will fall within the scope of Regulation (EU) 651/2014 upon the expiry of Article 56 of Commission Regulation (EU) 2022/2473<sup>21</sup> on 30 June 2023.
- (24) With regard to investment aid for district heating and/or cooling systems, the compatibility conditions laid down in Article 46 of Regulation (EU) No 651/2014 on support for investments in district heating and/or cooling systems that are based on fossil fuels, notably on natural gas, as well as investments in or upgrades to distribution networks, should be adjusted to take into account the Green Deal and the European Climate Law objectives, and in particular the Sustainable Europe Investment Plan<sup>22</sup>.

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

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

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

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

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

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

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

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

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

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

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

(c) the following paragraph 6 is inserted:

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

(2) Article 2 is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) point (40) is deleted;

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

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

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

(a) pig iron and ferro-alloys:

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

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

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

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

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

(d) cold finished products:

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

(e) tubes:

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

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

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

(j) point (44) is deleted;

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

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

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

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

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

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

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

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

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

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

A replacement investment thus does not constitute an initial investment.

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

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

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



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

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

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

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

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

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

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

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

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

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

(p) point 80 is replaced by the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) point (89) is deleted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(102) ‘Union standard’ means:

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

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

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

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

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

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

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

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

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

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

(102f) ‘clean vehicle’ means:

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

- (b) concerning heavy-duty road vehicles:
- until 31 December 2025, a low-emission heavy-duty vehicle as defined in Article 3, point (12) of Regulation (EU) 2019/1242 of the European Parliament and of the Council\*\*;
  - until 31 December 2025, a clean vehicle as defined in Article 4, point (4)(b) of Directive 2009/33/EC and not falling within the scope of Regulation (EU) 2019/1242;
- (d) concerning inland waterway vessels:
- an inland vessel for passenger transport that has a hybrid or dual fuel engine deriving at least 50 % of its energy from zero direct (tailpipe) CO<sub>2</sub> emission fuels or plug-in power for its normal operation;
  - an inland vessel for freight transport with direct (tailpipe) emissions of CO<sub>2</sub> per tonne kilometre (g CO<sub>2</sub>/tkm), calculated (or estimated in case of new vessels) using the International Maritime Organization Energy Efficiency Operational Indicator (EEOI), 50 % lower than the average reference value for emissions of CO<sub>2</sub> determined for heavy duty vehicles (vehicle subgroup 5- LH) in accordance with Article 11 of Regulation (EU) 2019/1242;
- (e) concerning maritime vessels:
- a sea and coastal vessel for passenger, freight transport, for port operations or for auxiliary activities that (i) has a hybrid or dual fuel engine deriving at least 25 % of its energy from zero direct (tailpipe) CO<sub>2</sub> emission fuels or plug-in power for its normal operation at sea and in ports, or (ii) has an attained International Maritime Organization's Energy Efficiency Design Index (EEDI) value 10 % below the EEDI requirements applicable on 1 April 2022 and is able to run on zero direct (tailpipe) CO<sub>2</sub> emission fuels or on fuels from renewable sources;
  - a sea and coastal vessel for freight transport that is used exclusively for operating coastal and short sea services designed to enable modal shift of freight currently transported by land to sea and that has direct (tailpipe) CO<sub>2</sub> emissions, calculated using the EEDI, 50 % lower than the average reference CO<sub>2</sub> emissions value determined for heavy duty vehicles (vehicle sub group 5-LH) in accordance with Article 11 of Regulation (EU) 2019/1242;
- (f) concerning rail rolling stock: rolling stock that has zero direct tailpipe CO<sub>2</sub> emissions when operated on a track with necessary infrastructure and that uses a conventional engine where such infrastructure is not available (bimode);
- (102g) 'zero-emission vehicle' means:
- (a) concerning two- and three-wheel vehicles and quadricycles: a vehicle falling within the scope of Regulation (EU) 168/2013 of the European Parliament and of the Council\*\*\* with zero tailpipe CO<sub>2</sub> emissions, calculated in accordance with the requirements laid down in Article 24 and Annex V of that Regulation;

- (b) concerning light-duty road vehicles: a vehicle of category M1, M2 or N1 with zero tailpipe CO<sub>2</sub> emissions, as determined in accordance with the requirements laid down in Commission Regulation (EU) 2017/1151\*\*\*\*;
- (c) concerning heavy-duty road vehicles: a zero-emission heavy duty vehicle as defined in Article 4, point (5) of Directive 2009/33/EC;
- (d) concerning inland waterway vessels: an inland vessel for passenger or freight transport with zero direct (tailpipe/exhaust) CO<sub>2</sub> emissions;
- (e) concerning maritime vessels: a sea and coastal vessel for passenger or freight transport, for port operations or for auxiliary activities that has zero direct (tailpipe) CO<sub>2</sub> emissions;
- (f) concerning rail rolling stock: rolling stock that has zero direct (tailpipe) CO<sub>2</sub> emissions;

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

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

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

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

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

\*\* Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO<sub>2</sub> emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC (OJ L 198, 25.7.2019, p. 202).

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

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

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

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



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\* Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).”;

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

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

(cc) point (103b) is deleted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(tt) point (121) is deleted:

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

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

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

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

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

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

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

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

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

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

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

(ww) point 124 is replaced by the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(aaa) point (129) is deleted;

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

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

(a) electricity:

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

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

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

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

(d) carbon dioxide:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

“(131a) ‘carbon capture and storage’ or ‘CCS’ means a set of technologies that make it possible to capture the CO<sub>2</sub> emitted from industrial plants, including process-inherent emissions, or to capture it directly from ambient air, to transport it to a storage site and inject it in suitable underground geological formations for the purpose of permanent storage;

(131b) ‘carbon capture and use’ or ‘CCU’ means a set of technologies that make it possible to capture the CO<sub>2</sub> emitted from industrial plants, including process-inherent emissions, or to capture it directly from ambient air, and to transport it to a CO<sub>2</sub>-consumption or utilisation site for full usage of that CO<sub>2</sub>;”;

(fff) point (134) is deleted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(mmm) point (161) is deleted;

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

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

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

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

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

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

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

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

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

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

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

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

(i) for aid for research and development:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) point (yd) is inserted:

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

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

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

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

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

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

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

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

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

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

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

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

(4) Article 5 is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(5) Article 6 is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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



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

(7) Article 8 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

(b) paragraph 4 is replaced by the following:

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

(8) Article 9 is amended as follows:

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

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

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

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

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

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

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

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

0.1-0.5;

0.5-1;

1-2;

2-5;

5-10;

10-30; and

30 and more.

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

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

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

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

(b) paragraph 4 is replaced by the following

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

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

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

(10) Article 13 is replaced by the following:

### *“Article 13*

### **Scope of regional aid**

This Section shall not apply to:

- (a) aid in the steel sector, the lignite sector and the coal sector;
- (b) aid to the transport sector as well as the related infrastructure; aid for energy generation, storage, transmission, distribution and infrastructure, except for regional investment aid in outermost regions and regional operating aid schemes; and aid in the broadband sector except for regional operating aid schemes;
- (c) regional aid in the form of schemes which are targeted at a limited number of specific sectors of economic activity; schemes aimed at tourism activities or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;
- (d) regional operating aid granted to undertakings whose principal activities fall under Section K ‘Financial and insurance activities’ of the NACE Rev. 2 or to undertakings that perform intra-group activities whose principal activities fall under classes 70.10 ‘Activities of head offices’ or 70.22 ‘Business and other management consultancy activities’ of NACE Rev. 2.”;

(11) Article 14 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

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

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

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

5. The investment shall be maintained in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. This shall not prevent the replacement of a plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period.

6. The assets acquired shall be new except for SMEs and for the acquisition of an establishment.

Costs related to the lease of tangible assets may be taken into account under the following conditions:

- (a) for land and buildings, the lease must continue for at least five years after the expected date of completion of the investment for large enterprises, and three years for SMEs;
- (b) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the aid beneficiary to purchase the asset at the expiry of the term of the lease.

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

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

(c) paragraph 8 is amended as follows:

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

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

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

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

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

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

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

(e) paragraphs 10 and 11 are deleted;

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

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

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

“13. Any initial investment related to the same or a similar activity started by the same beneficiary (at group level) within a period of three years from the date of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project”;

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

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

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

(12) Article 15 is amended as follows:

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

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

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

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

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

(13) Article 16 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

(b) paragraph 6 is replaced by the following:

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

(14) Article 17 is amended as follows:

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

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

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

3. In order to be considered an eligible cost for the purposes of this Article, an investment shall consist of the following:

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

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

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

(b) the following paragraph 3a is inserted:

“3a. Costs related to the lease of tangible assets may be taken into account under the following conditions:

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

(c) paragraph 4 is amended as follows:

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

“(b) they shall be amortisable;”;

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

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

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

*“Article 19a*

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

1. Aid for costs incurred by SMEs participating in CLLD projects covered by Regulation (EU) No 1303/2013 or Regulation (EU) 2021/1060 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

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

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

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

*Article 19b*

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

1. Aid to undertakings participating in, or benefitting from, CLLD projects, as referred to in Article 19a(1), shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The total amount of aid under this Article granted per project shall not exceed EUR 200 000.”;

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

*“Article 19c*

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

1. Aid to microenterprises in the form of of public interventions concerning the supply of electricity, gas or heat shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled. This Article shall apply to:

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

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

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



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

*Article 19d*

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

1. Aid to SMEs in the form of public interventions concerning the supply of electricity, gas or heat, to the extent it is produced from natural gas or electricity, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled. This Article shall apply to:

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

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

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

3. Payments made to suppliers for supplies provided to SMEs, as imposed by public interventions in price setting below the cost of the supplier, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that:

- (a) the public intervention in price setting meets the requirements set out in paragraph (2); and

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

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

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

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

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

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

(18) Article 21 is replaced by the following:

*“Article 21*

### **Risk finance aid**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) for risk finance aid in forms other than guarantees, prioritised returns from profits (asymmetric profit sharing or upside incentives) shall be given preference over protection against potential losses (downside protection);
- (b) in the case of asymmetric loss-sharing between public and private investors, the first loss borne by the public investor shall be capped at 25 % of the risk finance investment;
- (c) for risk finance aid in the form of guarantees, the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at a maximum of 25 % of the underlying guaranteed portfolio. Only guarantees covering expected losses of the underlying guaranteed portfolio may be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.

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

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

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