



**SOUTH OF SCOTLAND ENTERPRISE**

**GENERAL BLOCK EXEMPTION SCHEME**

## TABLE OF CONTENTS

<b>Clause</b>	<b>Page No.</b>
INTRODUCTION TO STATE AID	1
ABOUT THIS SCHEME	2
FUNDAMENTAL COMPLIANCE REQUIRED FOR GBER AID TO BE LEGALLY CORRECT	4
1 REGIONAL INVESTMENT AID – INITIAL INVESTMENT AND JOB CREATION – ARTICLE 14	9
2 SME AID	20
3 AID FOR ACCESS TO FINANCE FOR SMES	28
4 AID FOR RESEARCH & DEVELOPMENT & INNOVATION	42
5 TRAINING AID – ARTICLE 31	55
6 AID FOR DISADVANTAGED WORKERS AND FOR WORKERS WITH DISABILITIES	56
7 AID FOR ENVIRONMENTAL PROTECTION	62
8 AID FOR BROADBAND INFRASTRUCTURE – ARTICLE 52	82
9 AID FOR CULTURE AND HERITAGE CONSERVATION – ARTICLE 53	84
10 AID SCHEMES FOR AUDIO-VISUAL WORKS – ARTICLE 54	88
11 AID FOR SPORT AND MULTIFUNCTIONAL RECREATIONAL INFRASTRUCTURE – ARTICLE 55	90
SCHEDULE	101
PART 1 – DEFINITIONS OF TERMS THAT APPLY TO THE GBER REGULATIONS	101
PART 2 - TABLE OF NOTIFICATION THRESHOLDS	126
PART 3 - NACE CLASSIFICATION	130
PART 4 - SME DEFINITION	131

## SOUTH OF SCOTLAND ENTERPRISE

### GENERAL BLOCK EXEMPTION SCHEME

#### INTRODUCTION TO STATE AID

The concept of State aid originates in article 87 of the EC Treaty, which is now article 107 of the Treaty on the Functioning of the European Union (“TFEU”) Article 107(1) provides that:

*“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”*

In other words, it is a form of public assistance, given to undertakings on a discretionary basis, which has the potential to distort competition and affect trade between Member States of the European Union.

It is regarded as problematic because State aid may provide an advantage to businesses at the expense of its rivals; it can mean that loss-making businesses remain in the market longer than they should, and that other businesses do not enter the market. This can ultimately result in higher prices for consumers.

It is unknown how the State aid rules will develop once the transition period expires on 31 December 2020. However, as EU State aid rules apply in law until at least the end of the transition period, under the European Union (Withdrawal Agreement) Act 2020 any State aid decisions up until that date can be challenged in the UK Courts for a period of ten years after the individual aid award.

Rules on State aid control are set by the European Commission and comprise various articles of the TFEU, Regulations, Frameworks and Guidelines - which set out what aid is potentially compatible with the single market and the circumstances in which it can be awarded.

The EC governs Member States' compliance with the rules on State aid control and many aid measures must be notified to the Commission and approval given before any award is made. Ignoring the rules can result in the EC or the Courts viewing aid as unlawful and possibly subject to repayment (plus interest) by the aid recipient/undertaking.

It is, however, important to remember that compliance with the State aid rules is not conclusive of whether South of Scotland Enterprise (“SOSE”) will award financial assistance or the level of such an award.

The rules on State aid control place constraints on what can be awarded. Accordingly, compliance with these constraints is necessary but not in and of itself sufficient for an award to be made. SOSE's decision-making process as regards the award of financial assistance to businesses focusses on the individual appraisal of business proposals and selection on the basis of their contribution to SOSE's aims, which are to:

- (a) further the sustainable economic and social development of the South of Scotland;  
and
- (b) improve the amenity and environment of the South of Scotland (our “**Aims**”),

using the minimum level of public finance necessary.

Please refer to SOSE's website for further information on the application process and our minimum requirements for assistance.

## **ABOUT THIS SCHEME**

The South of Scotland Enterprise General Block Exemption Scheme (this “**scheme**”) operates under 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 OJEU 2014 L/187/1 published on 26 June 2014 (as amended by Commission Regulation (EU) No 2017/1084 of 14 June 2017 OJEU L156) (“**GBER**”).

SOSE operates this scheme to cover the following types of State aid and activity:

1. Regional aid
2. Aid to SMEs in the form of investment aid, [operating aid] and aid for SMES' access to finance
3. Aid for research and development and innovation (R&D&I)
4. Training aid
5. Aid for disadvantaged workers and for workers with disabilities
6. Aid for environmental protection
7. Aid for broadband infrastructures
8. Aid for culture and heritage conservation
9. Aid for audio-visual works
10. Aid for sport and multifunctional recreational infrastructures
11. Aid for local infrastructures
12. Aid for regional airports and ports

Please note that there are separate schemes for sectors which sit outside the scope of GBER, most notably, Fisheries & Aquaculture and Agriculture & Forestry.

This scheme facilitates SOSE to offer assistance to businesses, individuals and communities which satisfy all necessary rules and regulations of the GBER. General criteria to satisfy fundamental compliance are detailed in the next section, followed by specific criteria for each category of aid (known as Articles) which must be complied with when SOSE approves State aid. SOSE implements this scheme under powers conferred on it by the South of Scotland Enterprise Act 2019.

### **Duration of the Scheme**

The GBER applies to all aid that was “granted” after 30 June 2014 (or 10 July 2017 for the amending Regulation) until the Regulation expires. This end date is nominally 31 December 2020 but provision has been made within the Regulation to permit its extension for six months to allow a period of transition to new State aid rules no later than 1 July 2021. This extension does not apply to Regional aid unless the Assisted Areas map is similarly extended.

### **Who can apply for aid from SOSE?**

SOSE financial assistance under this scheme is available in principle to all enterprises, subject to certain specific restrictions as to sector, location within the South of Scotland (being the areas of: (a) Dumfries and Galloway Council; and (b) Scottish Borders Council) and/or firm size as indicated in the detailed rules below.

### **Definition of the “Beneficiary” and of the “Undertaking”**

State aid regulations and guidelines refer to the “**beneficiary**” often, especially in connection with State aid ceilings and obligations that attach to the aid. The beneficiary is the undertaking which is the target of the aid, but the meaning of “the undertaking” is very particular and is not simply the legal entity that may be the applicant or the recipient of the particular aid concerned.

An “**undertaking**” for State aid purposes is an entity, or group of entities that carry out a commercial operation. The European Commission focuses on the activity being undertaken and the relevant market, rather than the nature of the entity (or entities) itself. If they are involved in any trading or commercial activities (even if not-for-profit) then state aid issues will need to be considered.

Where several different activities are necessary in order to complete a commercial transaction, and where they have been set up in order to deliver the commercial activity, and thus one depends on the other, then there may be several entities engaged in an undertaking. For example, in a group company situation, one subsidiary may be responsible for manufacturing and another may be responsible for marketing and transport, but both share the risks and rewards through the group structure and the involvement of the partners is not merely incidental but has been planned and implemented in a way that ensures the delivery of the undertaking as a whole.

Sometimes these relationships are contractual, such as a partnership, rather than formal ownership links, but the key element is that they are each engaged in part of a commercial operation and they share in some way in the risks and rewards of the commercial operation. The risk and profit sharing distinguishes this type of co-operation from the relationship between a producer and an independent sub-contractor.

## General Eligibility Criteria for all Aid

Successful applicants should be able to demonstrate the following SOSE Criteria:

- the project will further the sustainable economic and social development of the South of Scotland and/or improve the amenity and environment of the South of Scotland;
- the project would not be able to proceed at all, or not at the same scale or speed without public assistance (ie. the aid would have an “**incentive effect**”); and
- the enterprise has the **capacity to implement** the project effectively to enhance its future competitiveness

The information provided in this scheme is intended to be a helpful summary of the types of aid which may be granted under cover of the GBER. Any award will, however, be subject to assessment against the detailed conditions of the Regulation. It should be noted that the aid amounts stated reflect the **maximum** levels of support permitted under GBER and SOSE may set lower aid intensities for specific products or programmes created under the scheme, taking into account the strategic rationale and market failure being addressed.

## FUNDAMENTAL COMPLIANCE REQUIRED FOR GBER AID TO BE LEGALLY CORRECT

There are a number of general criteria that apply across all GBER Articles. These must be complied with and properly evidenced. If the smallest detail is overlooked there is a risk that, following an EU audit or investigation, the aid could be deemed non-compliant and the recipient could be required to repay the grant. Due attention should be given to each of the following criteria and ensuring that these are **satisfied and current** at the “date of granting” (see below).

### Eligible Sectors

The GBER applies to nearly all sectors of the economy although there are exceptions. In fisheries and aquaculture sector and the primary agriculture sector only limited support is available under the GBER but other support is available to these sectors via separate schemes.

Some sectors, such as transport, shipbuilding, energy generation, coal and steel making have specific restrictions for certain types of aid within the GBER, but other types of aid may be permissible for these sectors, so vigilance is required to ensure specific cases are eligible for specific types of GBER aid. These sectoral restrictions are required to respect specific EU policies in these sectors, and the details are listed in the descriptions of the relevant types of GBER aid in the Articles following.

### Ineligible Activities

GBER Aid shall not be permitted for the following:

- export activity where the aid is directly linked to the quantities exported, to the establishment and operation of a distribution network for exports or for other operating costs linked to the export activity;
- aid in the fisheries sectors or to the primary agricultural sector except those types of aid noted below in this section. Separate Block Exemption Schemes are operated by SOSE for these sectors;
- aid which restricts the beneficiary's activities in another Member State, including (but not limited to):
  - preventing location of headquarters;
  - exploiting R&D in another Member State;
  - not purchasing supplies from another Member State;
  - similarly it is not possible to insist that an applicant must have an existing presence in this, or any other Member State, in order to be eligible.

### **Possibilities in Agriculture and Fisheries & Aquaculture Sectors**

- The **primary agricultural production** sector (farming & forestry), may only receive the following:
  - Consultancy aid for SMEs (Article 18);
  - Research & Development projects and feasibility studies (Articles 25 to 29);
  - SME Risk finance (Article 21);
  - Training (Article 31);
  - Environmental aid (Articles 36 to 49);
  - Aid to recruit disadvantaged workers or to recruit workers with disabilities (Articles 32-35).

Other types of assistance may be available under the SOSE scheme for the agricultural sector. Aid for the processing of agricultural products is permitted under the GBER.

- Fishing, aquaculture and fish processing sectors may receive the following:
  - Research, Development & Innovation aid (Articles 24-30);
  - Training (Article 31);

- SME access to finance (Articles 21 to 24);
- Aid to recruit disadvantaged workers or to recruit workers with disabilities (Articles 32-35).

### **Applicants subject to outstanding recovery of aid order**

New aid cannot be awarded to an undertaking which has been the subject of an EC Decision declaring illegal and incompatible aid granted in the UK and which is subject to an outstanding recovery order.

### **Undertakings in difficulty**

GBER aid may not be given to an applicant that fails any one of the “undertaking in difficulty” tests (set out in Part 1 of the Schedule).

### **Notification thresholds**

**The combined total of public sector grant** or grant equivalence of loans, guarantees and grants released in instalments must not exceed the thresholds set out in Part 2 of the Schedule without prior notification to the European Commission. Where larger levels of aid are proposed a formal notification procedure must be carried out, following which some or all of the proposed aid may be approved. These cases are likely to take 1 to 2 years to gain prior approval, and during this period no aid may be paid to the beneficiary.

### **Transparent aid**

Aid is only permissible under GBER where it is “transparent”: i.e. grants and interest rate subsidies, loans where gross grant equivalent takes account of the reference rate, guarantee schemes, fiscal measures (with a cap) and some types of repayable advances.

In other words, transparent aid means when it is possible to calculate a realistic value for the aid. In the case of grants it is relatively easy to translate this into the amount of money that can be provided; however for loans on preferential rates and guarantees the aid element will have to be calculated - e.g. for loans this would be the difference between the soft and commercial interest rates. This aid element is called the “gross grant equivalent” or sometimes the “cash grant equivalent”.

For aid in the form of the sale or lease of tangible assets (e.g. land or property) below markets rates, the value should be established by independent expert evaluation prior to the transaction or by reference to a publicly available and regularly updated benchmark, in order to demonstrate transparency.

### **Incentive Effect**

The GBER requires that aid shall have an **incentive effect**. The GBER provides different criteria for the verification of the incentive effect with ranging complexity: (i) for certain types of measures, incentive effect is presumed; (ii) for SMEs, the incentive effect is present if the application for aid was submitted

prior to the start of the project; (iii) and for large enterprises, in addition to the above, SOSE will verify basic conditions of the documentation. The key requirement for beneficiaries to be aware of is that they must submit a written application/enquiry/expression of interest to SOSE before work on the project activity has started (see definition of “start of works” at Part 1 of the Schedule). If an applicant does not submit this in advance, a subsequent award of aid could be deemed incompatible (illegal) aid and the European Commission can demand it is recovered from the client. Where an application form has not been submitted, a brief proposal or written summary will be obtained from the prospective beneficiary before the award is confirmed. The minimum information required in written form is (Article 6, GBER):

- the undertaking’s name and address;
- size of the undertaking in terms of the SME definition of a small, medium or large enterprise
- description of the project, including its start and end dates;;
- location of the project;
- list of project costs (not necessarily the final costs but their best estimate);
- type of aid (grant, loan, guarantee or other) and amount of public funding needed for the project.

Expenditure on preliminary costs for tangible assets including land and professional fees may be invested prior to the start of works and will be considered part of the private sector contribution to the project. In order not to breach the incentive effect it is vital that preliminary costs financed before the date of application do not exceed the private sector contribution to the project. If the preliminary costs exceed the private sector contribution then a detailed application must be submitted prior to incurring the preliminary expenditure.

An incentive effect does not have to be demonstrated for the following Articles as long as the relevant conditions within the Article are fulfilled:

- Article 21 - Risk Finance for SMEs;
- Article 22 - Aid for small start-ups;
- Articles 32, 33, 34, 35 concerning aid for disadvantaged workers and workers with disabilities;
- Article 53 - Culture and Heritage Conservation;

### **Aid ceilings and cumulation of aid**

Aid intensity is the maximum permitted amount of aid expressed as a percentage of the eligible costs of a given project. Different aid intensity limits are specified for different categories of aid permitted under GBER.

The maximum assistance levels (aid intensity) referred to in the detailed rules below are calculated as the grant (or grant equivalence of a subsidy) as a proportion of eligible costs. No deduction for tax or any other charge is made. Aid payable in several instalments shall be discounted to its value at the date of granting. The discount rate used in grant equivalence and for present value calculations is the EU Discount Rate.<sup>1</sup>

The eligible costs shall be supported by documentary evidence which shall be clear, itemised and current.

It might be that the aid intensity can be increased for aid for projects based within an Assisted Area as listed in the UK Assisted Areas 2014-2020 decision<sup>2</sup>. This is set out, where relevant, at each Article in the scheme.

### **Cumulation with other assistance**

To ensure that aid intensity ceilings or maximum aid limits are not breached, all forms of public funding used to fund the same eligible costs must be taken into account and cumulated, irrespective of whether the support is financed from local, regional, national or community sources.

Aid permitted under the GBER can be awarded in addition to other aid permitted by the GBER as long as those aid measures concern different identifiable eligible costs. Two or more categories of the GBER can be used to support a project without recourse to cumulation so long as they relate to clearly divisible project costs.

These may have different grant ceilings, as for example when SME investment aid for machinery is cumulated with aid for vehicles which go beyond community standards.

Aid under the GBER may only be cumulated with other aid or De Minimis aid towards the same or partly overlapping eligible costs under the restricted circumstances where the resulting cumulation would not exceed the permitted maximum intensity under this scheme. Under no circumstances can aid be cumulated with other aid under this GBER or De Minimis aid towards the same eligible costs, if the resulting intensity of aid to the eligible costs exceeds the limits of this scheme.

Aid “without identifiable eligible costs” (i.e. Articles 21 & 22) 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 in favour of workers with disabilities (Articles 33 and 34) may be cumulated with other support through the GBER in relation to the same eligible costs above the highest applicable threshold, provided

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<sup>1</sup> The link in full is [http://ec.europa.eu/competition/state\\_aid/legislation/reference\\_rates.html](http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html) here you can select the latest update

<sup>2</sup> <http://www.ukassistedareasmap.com/>

that such cumulation does not result in an aid intensity exceeding 100 % of the relevant costs over any period for which the workers concerned are employed.

It should be noted that the thresholds set out throughout the GBR shall not be circumvented by artificially splitting up the aid schemes or aid projects.

## **Date of granting**

The date of granting of aid is defined as the date when an offer of State aid becomes available to the beneficiary. This is in effect the date of the award letter confirming the amount and nature of the aid **unless SOSE** has included subjective conditions – such as, for example, the submission of a business plan which is to SOSE's "satisfaction" - in which case the date of granting becomes the date when it is confirmed that all such conditions have been satisfied.

## **1 REGIONAL INVESTMENT AID – INITIAL INVESTMENT AND JOB CREATION – ARTICLE 14**

### **1.1 Eligible activities and eligible firms**

Eligible activities are:

#### **1.1.1 Initial investment in new economic activity (large firms):**

- (a) an investment in tangible and intangible assets related to the setting up of a new establishment, or to the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment; or
- (b) the acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not the same or a similar activity to the activity performed in the establishment prior to the acquisition.

1.1.2 For large firms a "new establishment" shall concern new activity (refer to the definitions at Part 1 of the Schedule). Note that "establishment" in the context of initial investment is understood as a production unit and not a legal entity.

1.1.3 The beneficiary (at group level) shall confirm that it has not carried out a relocation of the same or similar activity from another part of the European Economic Area (EEA) to the proposed new operation in the SOSE area in the two years preceding its application for regional investment aid. The applicant shall give a commitment

not to carry out such a transfer for a period of two years after the initial investment for which the aid is requested is completed:

- (a) so if the group has relocated a similar establishment in the UK this would be eligible for Regional Aid, but not if it relocated from another EEA State;
- (b) a “transfer” is deemed to have taken place if the product or service in the initial and in the aided establishment serves at least partly the same purpose and meets the demands or needs of the same types of customers and jobs are lost in the “same or similar” activity in one of the initial establishments of the beneficiary in the EEA.

- 1.1.4 Initial investment (SMEs only) in tangible assets related to the setting up of a new establishment.
- 1.1.5 Acquisition by an SME of assets belonging to an establishment that has closed, or would have closed had it not been purchased and is bought by an investor unrelated to the seller (refer the definitions at Part 1 of the Schedule). Note that “establishment” in the context of initial investment is understood as a production unit and not a legal entity.
- 1.1.6 The extension of an existing establishment by SMEs only.
- 1.1.7 The diversification of the output of an establishment into new additional products, under the condition that the new activity is not the same or a similar activity to the activity (SMEs & large firms).
- 1.1.8 The fundamental change in the overall process of an existing establishment (SMEs only).
- 1.1.9 The acquisition of the capital assets directly linked to an establishment which has closed or would have closed had it not been purchased, and the assets are bought by an independent investor (SMEs & large firms).
- 1.1.10 In the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought by an independent investor shall be waived.
- 1.1.11 Regional aid under the GBER is not allowed for schemes that target a limited number or specific sector of economic activity as the EC regards these as potentially more distorting and therefore any such schemes would have to be notified for prior approval. However, for the purposes of Regional aid, schemes that are targeted at tourism, broadband infrastructures or processing and marketing of agricultural products are not considered to be targeted at specific economic activity.

## 1.2 Ineligible Sectors

The following restrictions apply:

1.2.1 Regional aid which favours activities in the following sectors is not permitted:

- (a) steel
- (b) coal
- (c) shipbuilding – excludes yachts as these are not “self-propelled commercial vessels”<sup>3</sup>. NOTE that shipyards which are below the thresholds for shipbuilding and ship repair (see Part 1 of the Schedule for definition) are eligible;
- (d) synthetic fibres;
- (e) aid to the transport sector as well as the related infrastructure (but which may be assisted under Article 56 while Airports and Maritime Ports may be assisted under Articles 56a and 56b respectively);
- (f) energy generation distribution and infrastructure – NACE division 35:
  - (i) 35 Electricity, gas, steam and air conditioning supply;
  - (ii) 35.1 Electric power generation, transmission and distribution:
    - (A) 35.1.1 Production of electricity;
    - (B) 35.1.2 Transmission of electricity;
    - (C) 35.1.3 Distribution of electricity;
    - (D) 35.1.4 Trade of electricity;
  - (iii) 35.2 Manufacture of gas; distribution of gaseous fuels through mains;
    - (A) 35.2.1 Manufacture of gas;
    - (B) 35.2.2 Distribution of gaseous fuels through mains;
    - (C) 35.2.3 Trade of gas through mains;

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<sup>3</sup> Framework on State aid to Shipbuilding (2011/C 364/06)

(D) 35.3 Steam and air conditioning supply;

(E) 35.3.0 Steam and air conditioning supply.

1.2.2 When deciding whether the aid favours energy generation, distribution activities or energy infrastructure, the activity that is the target of financing/investment will be the main criterion of the assessment. (For district heating refer to Article 46 and support for biofuels refer to Article 41).

1.2.3 The sectors which are ineligible for Regional aid may be eligible under SME investment aid (see Article 17) except for primary production of agricultural products, fishing, aquaculture and fish processing.

1.2.4 Regional aid in the form of schemes which are targeted at a limited number of specific sectors of economic activity is not permitted; however schemes aimed at tourism activities, broadband infrastructures or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity.

1.2.5 Regional aid is neither permitted for the Fisheries and Aquaculture sector nor the primary production of agricultural products.

1.2.6 Regional aid for the processing and marketing of agricultural products may be given except:

(a) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or

(b) when the aid is conditional on being partly or entirely passed on to primary producers.

### 1.3 **Eligible Costs (one or more of the following)**

1.3.1 Tangible assets – land, buildings, equipment, including professional fees and similar costs arising out of tangible assets which are recorded on the balance sheet.

1.3.2 Equipment purchased by large firms shall be new. Where second hand equipment is purchased by SMEs it shall be purchased at market prices which should be objectively verified.

1.3.3 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 project for large undertakings or three years in the case of SMEs;
  - (b) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset upon expiry of the term of the lease.
- 1.3.4 For aid for the diversification of an existing establishment, the eligible costs must exceed by at least 200% the book value of the assets that are reused, as registered in the fiscal year preceding the start of works.
- 1.3.5 Intangible assets, up to 100% of eligible costs for SMEs and not exceeding 50% of eligible costs for large firms.
- 1.3.6 Wage costs - two years of estimated wage costs of net additional employment created directly by the investment project. Net additional jobs are additional jobs created by comparison with the number of jobs present in the previous 12 months before the investment began (on the basis of FTE jobs). Any jobs lost during the first three years on the same site as the project must be deducted from those created, to arrive at the net additional number of jobs created. Jobs to be counted are those created in the first three years following completion of the investment. The wage cost is the gross wage paid to the employee before tax plus compulsory social security charges.
- 1.3.7 Acquisition of an existing establishment - only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration, except in the case of business succession (see below). The transaction shall take place under market conditions. 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. Where a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets be bought from third parties unrelated to the buyer shall be waived.
- 1.3.8 The acquisition of shares does not constitute initial investment.
- 1.3.9 Additional investment costs to upgrade existing assets. The additional costs of upgraded assets are those costs in excess of the cost of replacement on a like for like basis.

The calculation of aid ceilings may be on the basis of assets only, wages only or a combination of the two provided that the resulting aid does not exceed the most favourable amount from the calculation based on either wages or assets.

State aid may not be given for the replacement of capital assets.

#### 1.4 **Types of Assistance**

Grant, loan, equity, guarantees.

#### 1.5 **Specific Definitions**

Adjusted aid amount means the maximum permissible aid amount for a large investment project, calculated according to the following formula:

$$\text{Maximum aid amount} = R \times (A + 0.5 \times B + 0 \times C)$$

where: R is the maximum aid intensity applicable in the area concerned established in an approved regional map and which is in force on the date of granting the aid, excluding the increased aid intensity for SMEs; A is the initial €50 million of eligible costs, B is the part of eligible costs between €50 million and €100 million and C is the part of eligible costs above €100 million.

The above formula progressively reduces the % aid ceiling on costs above €50m, resulting in a lower overall ceiling for than would have been the case if the basic aid ceilings had been applied to a project with costs over this level. Note that the formula means that no aid may be given on that portion of the costs above €100m under the “adjusted aid amount” rules (i.e. the effect of “0 X C” in the formula). This means that even for cases that are notified to the EC because they exceed the notification threshold (which is defined as the aid amount calculated using the adjusted aid formula applied to a project costing €100m) the Commission are unlikely to authorise aid levels in excess of the notification threshold, even for projects much bigger than €100m unless there is compelling and objective evidence that the benefits exceed the costs in terms of distortion of competition.

**“Agricultural product”** means the products listed in Annex I to the Treaty, except fishery and aquaculture products listed in the Regulation of Common Organisation of Markets in Fishery and Aquaculture products (CMO) Annex I;<sup>4</sup>

**“Marketing of agricultural products”** means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose;

**“Primary agricultural production”** means production of products of the soil and of stock farming, listed in Annex I to the Treaty (see products listed in Annex 1 to the Treaty of European Unity (“TFEU”) in the Rules and Guidance section of the Intranet), without performing any further operation changing the nature of such products;

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<sup>4</sup> Regulation [\(EU\) 1379/2013](#) of the European Parliament and of the Council of 11 December 2013.

**“Processing of agricultural products”** means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;

**“Scheme targeted at a limited number of specific sectors of economic activity”** means a scheme which covers activities falling within the scope of less than five classes (four-digit numerical code) of the NACE 2<sup>5</sup> statistical classification. For further information on NACE refer to Part 3 of the Schedule;

**“Shipbuilding”** definitions:

- (a) **“shipbuilding”** means the building, in the Union, of self-propelled commercial vessels;
- (b) **“ship repair”** means the repair or reconditioning, in the Union, of self-propelled commercial vessels;
- (c) **“ship conversion”** means the conversion, in the Union, of self-propelled commercial vessels of not less than 1 000 Gross Tonnes, on condition that conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger accommodation;
- (d) **“self-propelled commercial vessel”** means a vessel that, by means of its permanent propulsion and steering, has all the characteristics of self-navigability on the high seas or on inland waterways and belongs to one of the following categories:
  - (i) seagoing vessels of not less than 100 Gross Tonnes and inland waterway vessels of equivalent size used for the transportation of passengers and/or goods;
  - (ii) seagoing vessels of not less than 100 Gross Tonnes and inland waterway vessels of equivalent size used for the performance of a specialised service (for example, dredgers and ice breakers);
  - (iii) tugs of not less than 365 kW;
  - (iv) unfinished shells of the vessels referred to in points (i), (ii) and (iii) that are afloat and mobile;
- (e) **“floating and moving offshore structures”** means structures for the exploration, exploitation or generation of oil, gas or renewable energy that have the characteristics of a commercial vessel except that they are not self-propelled and are intended to be moved several times during their operation;

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<sup>5</sup> NACE is the EU equivalent of UK SIC codes – HMS is to be adapted to show NACE codes only.

**“Single Investment Project”** - any initial investment started by the same beneficiary (at group level) within a period of three years from the date of the start of works on another aided investment in the same level three region of the Nomenclature of Territorial Units for statistics (NUTS 3) shall be considered part of a single investment project. The NUTS 3 areas for the SOSE area are: UKM24 - Scottish Borders; UKM32 - Dumfries & Galloway; UKM33 - East Ayrshire and North Ayrshire mainland; UKM37 - South Ayrshire; and UKM38 - South Lanarkshire.

Where such single investment project is a large investment project (costs over €50m), the total aid amount for the single investment project shall not exceed the “adjusted aid amount” (see specific definition above);

**“Start of works”** means the earlier of 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. An investment is considered irreversible if the financial penalty of cancellation would make it financially better for the applicant to continue with the project without State aid than cancel the commitment. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works except in the case where buying land and preparatory works prior to the start of construction or legally binding commitment exceeds the private sector commitment to the project. Where these preliminary costs exceed the private sector contribution it is necessary for an application to have been submitted in order to comply with the incentive effect (see general eligibility criteria for GBE). For take-overs, “start of works” means the moment of acquiring the assets directly linked to the acquired establishment.

**“Steel sector”** means all activities related to the production of one or more of the following products:

- (a) pig iron and ferro-alloys: pig iron for steelmaking, foundry and other pig iron, spiegeleisen and highcarbon; ferro-manganese, not including other ferro-alloys;
- (b) crude and semi-finished products of iron, ordinary steel or special steel: liquid steel whether or not cast into ingots, including ingots for forging semi-finished; products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wire 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 150mm, 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, black plate, 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;

**“Synthetic fibres sector”** means:

- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used;

**“Tourism activity”** means the following activities in terms of NACE (2):

- (a) 55: Accommodation;
- (b) 56: Food and beverage service activities;
- (c) 79: Travel agency, tour operator reservation service and related activities;
- (d) 90: Creative, arts and entertainment activities;
- (e) 91: Libraries, archives, museums and other cultural activities;
- (f) 93: Sports activities and amusement and recreation activities;

**“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 NACE (2):

- (a) 49: Land transport and transport via pipelines, excluding 49.32 Taxi operation, 49.42 Removal services, 49.5 Transport via pipeline;
- (b) 50: Water transport; including cruise boats and tourism excursion boats;
- (c) 51: Air transport, excluding 51.22 Space transport;

**“The same or a similar activity”** means an activity falling under the same class (four digit numerical code) of the NACE (2) statistical classification of economic activities. The NACE classification is described further in Part 3 of the Schedule;

**“Tangible assets”** means assets consisting of land, buildings and plant, machinery and equipment;

**“Intangible assets”** means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property.

**“Wage cost”** means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising over a defined period of time the gross wage before tax and compulsory contributions such as social security, child care and parent care costs.

## 1.6 Geographic eligibility

The assets or the employment aided must be permanently based within an Assisted Area as listed in the UK Assisted Areas 2014-2020 decision<sup>6</sup>.

## 1.7 Aid Limits

The table below gives the maximum State aid levels in Grant / grant equivalents as a % of the total value of eligible costs in the project whether or not the grant is paid out against all of the eligible costs).

	<b>Small Enterprises</b>	<b>Medium Sized Enterprises</b>	<b>Large Enterprises</b>
Non-predefined article 107(3)(c) areas	30%	20%	10%

The calculation of aid ceilings may be done on the basis of assets only, wages only or a combination of the two. See the following section for details.

1.7.1 **Large projects (costs over €50m)** - reduced aid ceilings apply to that part of the project costs which exceed €50m, as defined in “Adjusted aid amount” in “specific definitions” above.

1.7.2 **Private sector financing** (including own funds and borrowing from the private sector) must be at least 25% of eligible costs, meaning that any combination of public funding by way of grants, loans and equity shall not exceed 75% of eligible project costs.

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<sup>6</sup> <http://www.ukassistedareamap.com/>

### 1.7.3 **Conditions attaching to the State aid**

- (a) State aid provided for tangible assets that are sold or moved out with the assisted area shall be repaid (in full) if the sale or transfer takes place within the following periods: For large firms, within five years of the completion of the investment. For SMEs, within three years from the completion of the investment.
- (b) When wage costs are used as the eligible costs, the employment created shall be maintained during a minimum of five years for large firms and three years for SMEs.
- (c) Intangible assets shall be used exclusively in the establishment being assisted by the undertaking receiving the aid.
- (d) Intangible assets shall be those that are regarded as amortizable assets in the formal accounts of the beneficiary.
- (e) Intangible assets must be purchased from unrelated third parties under market conditions,
- (f) Intangible assets shall be included in the assets of the beneficiary, for at least 5 years for large firms and for at least three years for SMEs.
- (g) The project must not have commenced expenditure on implementation before an application for assistance towards the project has been submitted to SOSE.
- (h) For SMEs new or second hand assets shall be purchased at market prices.
- (i) For large firms equipment purchases shall be new.

### 1.7.4 **Regional aid for broadband network development shall fulfil the following conditions**

- (a) Aid shall be granted only in areas where there is no network of the same category (either basic broadband or NGA) and where no such network is likely to be developed on commercial terms within three years from the decision to grant the aid; and
- (b) The subsidised network operator must offer active and passive wholesale access under fair and non- discriminatory conditions including physical unbundling in the case of NGA networks; and
- (c) Aid shall be allocated on the basis of a competitive selection process.

Regional aid for research infrastructures shall be granted only if the aid is made conditional on giving transparent and non-discriminatory access to the aided infrastructure.

## 1.8 Notification threshold

There are aid levels for each article, over which a project will need individual notification to the European Commission in advance of offering financial assistance, which means that assistance greater than those listed below cannot be awarded under this GBE Scheme.

For this type of aid the notification threshold is the same as the State aid. If a business receives more than one award of this type of aid (under this article) they have to be accumulated together for purposes of the notification threshold. Other aid types (i.e. under other GBER articles) for the same project do not need to be cumulated for the notification threshold.

Type of GBER aid applicable	Aid level for a single investment project <sup>7</sup> above which notification for prior approval is required	Comment
Non-predefined article 107(3)(c) areas	€7.5m	Per project

## 2 SME AID

Support under SME aid breaks into investment aid, access to consultancy, participation at trade fairs and cooperation costs incurred by SMEs participating in European Territorial Cooperation projects.

### 2.1 Investment aid to SMEs – Article 17

#### 2.1.1 Eligible activities

This covers aid for activities in certain sectors that are ineligible for Regional aid, initial investment and job creation aid or where the obligation to retain the asset in the assisted area is not desired.

Such activities can be for any of the following purposes by an SME:

<sup>7</sup> see “Specific Definitions” for Regional aid earlier in this section regarding the definition of a single investment project.

- (a) the setting up of a new establishment;
- (b) the extension of an existing establishment;
- (c) the diversification of the output of an establishment into new additional products;
- (d) the fundamental change in the overall process of an existing establishment;
- (e) the acquisition of the capital assets directly linked to an establishment which has closed or would have closed had it not been purchased, and the assets are bought by an independent investor: in the case of business succession of a Small Enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought by an independent investor shall be waived.

#### 2.1.2 **Ineligible activities**

- (a) State aid may not be given for the replacement of capital assets.
- (b) The sole acquisition of the shares (that is, without acquiring the actual assets) of an undertaking shall not constitute investment.

#### 2.1.3 **Geographic eligibility**

The investment must be within the SOSE operational area. Due to the SME supplements available under Regional aid providing higher assistance ceilings these powers are only relevant in certain exceptional cases where the project may not be eligible for Regional investment aid.

#### 2.1.4 **Sectoral eligibility**

The sectors that may receive SME investment aid that cannot receive Regional aid are as follows:

- (a) steel;
- (b) coal;
- (c) shipbuilding;
- (d) synthetic fibres;
- (e) transport;

- (f) energy generation;
- (g) energy infrastructure;
- (h) energy distribution.

Ineligible sectors are:

- (a) fishing, fish processing and aquaculture;
- (b) primary production of agricultural products, including the growing of trees;
- (c) aid for the processing and marketing of agricultural products may be given except:
  - (i) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or
  - (ii) when the aid is conditional on being partly or entirely passed on to primary producers.

#### 2.1.5 Aid Limits

The table below gives the maximum State aid levels in Grant / grant equivalents as % of eligible costs:

	<b>Small Enterprises</b>	<b>Medium Sized Enterprises</b>	<b>Large Enterprises</b>
Investments with up to €7.5 million of grant equivalent aid per undertaking per investment project	20%	10%	0%

#### 2.1.6 Eligible Costs

Investment comprising one or more of the following:

- (a) tangible assets – land, buildings, equipment and Intangible Assets. The latter may amount to 100% of investment costs;
- (b) estimated wage costs:

- (i) two years of estimated wage costs of net additional employment created directly by the investment project;
  - (ii) net additional jobs are additional jobs created by comparison with the number of jobs present in the previous 12 months before the investment began (on the basis of FTE jobs);
  - (iii) any jobs lost during the first three years on the same site as the project must be deducted from those created, to arrive at the net additional number of jobs created;
  - (iv) jobs to be counted are those created in the first three years following completion of the investment;
  - (v) the wage cost is the gross wage paid to the employee before tax plus compulsory social security charges;
- (c) the acquisition of the assets belonging to an establishment that would have closed if it had not been purchased - only the costs of buying assets from third parties unrelated to the buyer shall be considered, provided that the transaction has taken place under market conditions;
  - (d) equipment lease costs - as an alternative to conventional purchase, and provided that the lease contains an obligation to purchase the asset at the expiry of the term;
  - (e) land and buildings lease costs, provided the lease term is at least three years;
  - (f) additional investment costs to up-grade existing assets. The additional costs of up-graded assets are those costs in excess of the cost of replacement on a like for like basis;
  - (g) the acquisition of shares does not constitute investment.

The calculation of aid ceilings may be on the basis of assets only, wages only or a combination of the two provided that the resulting aid does not exceed the most favourable amount from the calculation based on either wages or assets.

#### 2.1.7 **Types of Assistance**

Grant, loan, equity, guarantees.

#### 2.1.8 **Conditions attaching to the State aid**

- (a) State aid provided for tangible assets that are sold shall be repaid (in full) if the sale or transfer takes place within three years from the completion of the investment.
- (b) When wage costs are used as the eligible costs, the employment so created shall be maintained during a minimum of three years.
- (c) Intangible assets shall be used exclusively in the establishment being assisted by the undertaking receiving the aid.
- (d) Intangible assets shall be regarded as amortizable assets in the formal accounts of the beneficiary.
- (e) Intangible assets must be purchased from third parties under market conditions, without the acquirer being in a position to have decisive control on the seller or vice versa by virtue of acquisition or by rights or contract.
- (f) Intangible assets shall be included in the assets of the beneficiary for at least three years.
- (g) The project must not have commenced expenditure on implementation before an application for assistance towards the project has been submitted to SOSE.

#### 2.1.9 **Notification threshold**

- (a) There are aid levels for each article, over which a project will need individual notification to the European Commission in advance of offering financial assistance, which means that assistance greater than that listed below cannot be awarded under this Scheme.
- (b) For this type of aid the notification threshold is the same as the State aid ceiling (in other cases it is an absolute amount of aid, irrespective of whether the percentage ceiling has been reached). If a business receives more than one award of this type of aid (under this article) they have to be accumulated together for purposes of the notification threshold. Other aid types (i.e. under other GBER articles) for the same project do not need to be cumulated for the notification threshold.

Type of GBER aid	Aid level above which a project must be notified for prior approval	Comment
SME capital investment (Art 17)	€7.5m	Per project per undertaking involved

## 2.2 Aid for consultancy to SMEs – Article 18

### 2.2.1 Eligible activities

Aid to enable SMEs to purchase consultancy to improve or develop their business

### 2.2.2 Geographic eligibility

The investment must be within the South of Scotland Enterprise Area.

### 2.2.3 Sectoral eligibility

All sectors are eligible except for fisheries, aquaculture and fish processing.

### 2.2.4 Aid Limits

The aid in grant or grant equivalence terms shall not exceed 50% of eligible costs.

### 2.2.5 Eligible Costs

The eligible costs shall be the costs of services provided by external consultants.

### 2.2.6 Types of Assistance

Grant, loan or access to subsidised state funded consultants.

### 2.2.7 Conditions attaching to the State aid

- (a) Services purchased from consultants shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal service, advertising or payroll services.
- (b) The expenditure on eligible costs must not have commenced before an application for assistance towards the project has been submitted to SOSE.

## 2.2.8 Notification threshold

Type of GBER aid	Aid level above which a project must be notified for prior approval	Comment
SME costs of external consultants (Art 18)	€2m	Per project per undertaking involved

## 2.3 Aid to SMEs for participation in fairs – Article 19

### 2.3.1 Eligible activities

To enable SMEs to participate in trade fairs (including repeat participations)

### 2.3.2 Geographic eligibility

The beneficiary must be resident in the South of Scotland Enterprise Area.

### 2.3.3 Sectoral eligibility

All sectors eligible except for:

- (a) fishing, fish processing and aquaculture;
- (b) primary production of agricultural products, including the growing of trees;
- (c) aid for the processing and marketing of agricultural products may be given except:
  - (i) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
  - (ii) when the aid is conditional on being partly or entirely passed on to primary producers.

### 2.3.4 Aid Limits

The aid in grant or grant equivalence shall not exceed 50% of eligible costs.

### 2.3.5 Eligible Costs

The eligible costs shall be the costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.

### 2.3.6 Types of Assistance

Grant, loan or subsidised facilities or services pertaining to a trade fair.

### 2.3.7 Conditions attaching to the State aid

The expenditure on eligible costs must not have commenced before an application for assistance towards the project has been submitted to SOSE.

### 2.3.8 Notification threshold

Type of GBER aid	Aid level above which a project must be notified for prior approval	Comment
SME aid to set up and run stand at a Trade Fair (Art 19)	€2m	Per undertaking per year

## 2.4 Aid for cooperation costs incurred by SMEs in ETC projects – Article 20

### 2.4.1 Eligible activities

To provide aid towards the costs incurred by SMEs becoming involved in European Territorial Co-operation projects.

### 2.4.2 Geographic eligibility

All of the SOSE area.

### 2.4.3 Sectoral eligibility

All sectors eligible except for:

- (a) fishing, fish processing and aquaculture;
- (b) primary production of agricultural products, including the growing of trees;
- (c) Aid for the processing and marketing of agricultural products may be given except:
  - (i) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or

- (ii) when the aid is conditional on being partly or entirely passed on to primary producers.

**2.4.4 Aid limits**

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

**2.4.5 Eligible costs**

The eligible costs shall be the following:

- (a) costs for organisational cooperation including the cost of staff and offices to the extent that it is linked to the cooperation project;
- (b) costs of advisory and support services linked to cooperation and delivered by external consultants and service providers;
- (c) travel expenses, costs of equipment and investment expenditure directly related to the project and depreciation of tools and equipment used directly for the project.

**2.4.6 Types of Assistance**

Grant or loan.

**2.4.7 Conditions attaching to the State aid**

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

**2.4.8 Notification threshold**

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Co-operation costs for SMEs participating in ETC projects (Art 20)	€2m	

**3 AID FOR ACCESS TO FINANCE FOR SMES**

**Please note that the GBER does not provide SOSE with State aid cover to directly invest in shares or other forms of risk capital on preferential terms (that is, on terms better**

than they could get from a commercial investor). SOSE may, however, make direct investments of risk capital via the *de minimis* regulation or on commercial terms (ie. no State aid).

### 3.1 Risk finance aid – Article 21

This Article provides SOSE with powers to invest risk capital into projects alongside private investors, in such a way that the public funding provides an incentive to private investors to finance the start-up and expansion of SMEs. Provided the investment fund or scheme is managed in a commercial way and the private investors and managers are selected in a transparent and non-discriminatory way, the public funding may assume a greater proportion of any losses on individual investments of up to 25% of the total investment in the project concerned. The public sector losses may be covered by the use of guarantees within certain limits.

#### 3.1.1 Eligible activities and eligible firms

Investment schemes and funds have the potential to benefit different firms involved in different stages of the operations and there are rules for each type. Throughout this section the following potential beneficiaries are covered by specific rules, conditions and definitions:

- (a) **“Financial Intermediary” (“FI”)** this is the person or body with overall responsibility for the fund or scheme, responsible for management and also directly involved with its own funding in the investments in target SMEs. It will be subject to the official regulator for financial services (Financial Conduct Authority). Full definition of an FI is shown later in this section;
- (b) **“Independent Private Investors” (“IPI”)** this is a private investor who invests for profit and who bears the full risk of their investment. They are not shareholders in the Financial Intermediary. Full definition of an IPI is shown in this section
- (c) **“eligible undertakings”** these are the investee companies.

#### 3.1.2 Eligible Costs

Risk capital is not allocated to specific costs, so it is simply an investment in a firm in one of the forms of funding that are permitted, and as part of co-investment in either the fund or the individual investee company identified through the Financial Intermediary.

### 3.1.3 Type of Assistance

SOSE investment may either be made to the financial intermediary, or alternatively directly into the firms alongside the investments by the Financial Intermediary and any private investors who participate in the scheme or fund.

**Investments made into the fund or scheme** implemented by the financial intermediary risk finance State aid may take one of the following forms:

- (a) equity or quasi-equity investment structured as debt, directly or indirectly to eligible undertakings;
- (b) loans to provide risk finance investments directly or indirectly to eligible undertakings; The refinancing of an existing loan shall not be an eligible loan.
- (c) guarantees to cover losses from risk finance investments directly or indirectly to eligible undertakings.

**Investments into eligible undertakings** (that is, firms selected for investment by the fund or scheme), risk finance aid may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof. The refinancing of an existing loan shall not be an eligible loan.

The risk finance aid may cover follow-on investments made in eligible undertakings and in undertaking that have been operating in any market for less than seven years if they had received Risk finance aid within the seven year period, if the following cumulative conditions are fulfilled:

- (a) the total amount of risk finance shall not exceed EUR 15 million per eligible undertaking under any risk finance scheme or fund;
- (b) the possibility of follow-on investments was foreseen in the original business plan;
- (c) the undertaking receiving follow-on investments has not become linked with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition (see Part 4 of the Schedule).

### 3.1.4 Specific Definitions

**“Eligible Financial Intermediaries”** the only restrictions are the fundamental GBER criteria that the beneficiary must not be in financial difficulties and must not be subject to an outstanding recovery order for repayment of illegal State aid;

**“Eligible Independent Private Investors”** as above;

**“Eligible Undertakings (the investee firms)”** there are no sectoral restrictions, but the general eligibility criteria mentioned above apply, plus any one of the following criteria must apply:

- (a) they have not been operating in any market;
- (b) they have been operating in any market for less than seven years following their first commercial sale;
- (c) they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding five years;

**“Quasi-equity investment”** means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default. Quasi-equity investments can be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity;

**“Guarantee”** in the context of the GBER means a written commitment to assume responsibility for all or part of a third party's newly originated loan transactions such as debt or lease instruments, as well as quasi-equity instruments;

**“Guarantee rate”** means the percentage of loss coverage by a public investor of each and every transaction eligible under the relevant State aid measure;

**“Exit”** means the liquidation of holdings by a financial intermediary or investor, including trade sale, write-offs, repayment of shares/loans, sale to another financial intermediary or another investor, sale to a financial institution and sale by public offering, including an initial public offering (**“IPO”**);

**“Financial endowment”** means a repayable public investment made to a financial intermediary for the purposes of making investments under a risk finance measure, and where all the proceeds shall be returned to the public investor;

**“Risk finance investment”** means equity and quasi-equity investments, loans including leases, guarantees, or a mix thereof to eligible undertakings for the purposes of making new investments;

**“Independent private investor”** means a private investor who is not a shareholder of the eligible undertaking in which it invests, including business angels and financial

institutions, irrespective of their ownership, to the extent that they bear the full risk in respect of their investment. Upon the creation of a new company, private investors, including the founders, are considered to be independent from that company;

**“Natural person”** for the purpose of Articles 21 and 23 means a person other than a legal entity who is not an undertaking;

**“Equity investment”** means the provision of capital to an undertaking, invested directly or indirectly in return for the ownership of a corresponding share of that undertaking;

**“First commercial sale”** means the first sale by a company on a product or service market, excluding limited sales to test the market;

**“Unlisted SME”** means an SME which is not listed on the official list of a stock exchange, except for alternative trading platforms;

**“Follow-on investment”** means additional risk finance investment in a company subsequent to one or more previous risk finance investment rounds;

**“Replacement capital”** means the purchase of existing shares in a company from an earlier investor or shareholder;

**“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 financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority, a public law body, or a private law body with a public service mission: the entrusted entity can be selected or directly appointed in accordance with the relevant EU Directive on Procurement;<sup>8</sup>

**“Loan”** means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period. It may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield. The refinancing of existing loans shall not be an eligible loan.

### 3.1.5 **Geographic Eligibility**

There are no geographic limitations, except that for SOSE purposes the benefits should accrue to the SoS economy via the investee firms. Note that the EU rules do not permit SOSE to discriminate against potential Financial Intermediaries purely on

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<sup>8</sup> [EU Directive 2004/18/EC](#)

the basis of their place of establishment or incorporation, but this would not prevent SOSE from specifying that funds or schemes that have SOSE investment should operate for the benefit of firms in the SoS.

### 3.1.6 **Sectoral eligibility**

Firms in all sectors may act as financial intermediaries (provided they can meet the criteria) and also firms in all sectors may benefit as investees.

### 3.1.7 **Aid limits**

For equity and quasi-equity investments in eligible undertakings, a risk finance fund or scheme may provide support for replacement capital only if the latter is combined with new capital representing at least 50% of each investment round into the eligible undertakings.

For equity and quasi-equity investments into the fund or scheme of an FI, no more than 30% of the FI's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

The total amount of risk finance shall not exceed €15 million per eligible undertaking under any risk finance scheme or fund.

For risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the risk finance measure 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 provided to the eligible undertakings prior to their first commercial sale on any market;
- (b) 40% of the risk finance provided to the eligible undertakings that have been operating in any market for less than seven years following their first commercial sale;
- (c) 60% of the risk finance for investment provided to eligible undertakings where they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding five years;
- (d) 60% of the risk finance for investment provided to eligible undertakings for follow-on investments in eligible undertakings after a seven year period following first commercial sale.

Risk finance measure targeting eligible undertakings at different development stages as referred to in a) to c) in the previous paragraph, and does not provide for private capital participation at the level of the eligible undertakings the financial intermediary shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in the underlying portfolio and resulting from the application of the minimum participation rates to such investments as referred to in the paragraph above.

### 3.1.8 **Special conditions for Risk Finance schemes and funds**

A risk finance measure shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries may be required to fulfil predefined criteria objectively justified by the nature of the investments.

A risk finance measure shall fulfil the following conditions:

- (a) it shall be implemented via one or more financial intermediaries;
- (b) financial intermediaries, as well as investors or fund managers shall be selected through an open, transparent and non-discriminatory call which is made in accordance with applicable Union and national laws and aimed at establishing appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit sharing shall be given preference over downside protection;
- (c) in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25% of the total investment;
- (d) in the case of guarantees to cover losses from risk finance investments by financial intermediaries, 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 can 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 guarantee premium that conforms to commercial market prices for such a guarantee.

Risk finance measures shall ensure profit-driven financing decisions. This is considered to be the case where all of the following conditions are fulfilled:

- (a) financial intermediaries shall be established according to the applicable laws;

- (b) the Member State, or the entity entrusted with the implementation of the measure, shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the risk finance measure, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the relevant portfolio of investments;
- (c) risk finance provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing ex-ante financial viability;
- (d) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.

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

- (a) they shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
- (b) their remuneration shall conform to market practices. This requirement is presumed to be met where the manager or the financial intermediary is selected through an open, transparent and non-discriminatory selection call, based on objective criteria linked to experience, expertise and operational and financial capacity;
- (c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
- (d) they shall set out an investment strategy, criteria and the proposed timing of investments;
- (e) investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.

A risk finance fund or scheme providing guarantees or loans to eligible undertakings, shall fulfil the following conditions:

- (a) as a result of the measure, the financial intermediary shall undertake investments that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial

intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;

- (b) in the case of loans, the nominal amount of the loan is taken into account in calculating the maximum investment;
- (c) in the case of guarantees, the nominal amount of the underlying loan is taken into account in calculating the maximum investment amount. The guarantee shall not exceed 80% of the underlying loan.

SOSE may assign the implementation of a risk finance measure to an “entrusted entity” (see definitions).

### 3.1.9 **Conditions for De Minimis investments within a Risk Capital scheme or fund**

Risk finance aid for SMEs that do not fulfil the conditions for “eligible undertakings” under this Article of the GBER may none the less be given through a risk finance scheme or fund as described in this section, provided that the aid complies with the Standard De Minimis rules and conditions (ceiling €200,000 except for road freight transport at €100,000). In these cases, the part of the investment in the fund or scheme that is made with public funds will have to be administered as De Minimis aid to the investee company, although not as such in respect of the FI. Under the De Minimis rules the total value of the public sector investment as risk finance is presumed to be the grant equivalent value of the State aid to the investee.

The conditions that have to be met in for risk finance under a scheme or fund can be given as De Minimis are as follows:

- (a) at the level of the investee SMEs, the aid fulfils the conditions laid down in standard and freight transport De Minimis (Regulation (EU) No 1407/2013); and
- (b) all the conditions laid down in the present Article, with the exception of the following:
  - (i) the eligible activities of investee firms;
  - (ii) the conditions for follow-on investments;
  - (iii) the De Minimis aid part does not need to be counted towards the €15m ceiling for all investments under the scheme;

- (iv) the rules concerning the levels private financing (weighted average) when investees at different development states are assisted within the fund;
- (c) for risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the measure shall leverage additional financing from independent private investors at the level of the financial intermediaries or the SMEs, so as to achieve an aggregate private participation rate reaching at least 60% of the risk finance provided to the SMEs.

**3.1.10 Notification threshold**

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Risk Finance investment via financial intermediaries in SMEs (Art 21)	€15m	Per undertaking that is eligible to receive finance from the scheme/fund

**3.2 Start-up aid for newly created small enterprises – Article 22**

**3.2.1 Eligibility of undertaking**

Eligible undertakings shall be unlisted small enterprises up to five years following their registration which fulfil the following conditions:

- (a) it has not taken over the activity of another enterprise;
- (b) it has not yet distributed profits;
- (c) it has not been formed through a merger unless the date of registration of the older enterprise in the merger would be less than five years from the date the aid will be actually granted.

For eligible undertakings that are not subject to registration the five years eligibility period may be considered to start from the moment when the enterprise either starts its economic activity or is liable to tax for its economic activity.

**3.2.2 Eligible activity**

Aid is for the start-up costs of newly created small enterprises.

### 3.2.3 **Eligible costs**

No restrictions.

### 3.2.4 **Types of assistance**

- (a) Loans with interest rates which do not conform with market conditions, with a duration of ten years and up to a maximum nominal amount of €1.5 million (for undertakings established in Assisted Areas). For loans with a duration comprised between five and ten years the maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. For loans with a duration of less than five years, the maximum amount shall be the same as for loans with a duration of five years.
- (b) Guarantees with premiums which do not conform to market conditions, with duration of ten years and up to maximum €1.5 million of amount guaranteed, or €2.25 million for undertakings established in assisted. For guarantees with a duration comprised between five and ten years the maximum amount guaranteed amounts may be adjusted by multiplying the amounts above by the ratio between ten years and the actual duration of the guarantee. For guarantees with a duration of less than five years, the maximum amount guaranteed shall be the same as for guarantees with a duration of five years. The guarantee shall not exceed 80% of the underlying loan.
- (c) Grants, including equity or quasi equity investment, interests rate and guarantee premium reductions up to €0.6 million gross grant equivalent (for undertakings established in Assisted Areas).

### 3.2.5 **Geographic eligibility**

All of the SOSE area.

### 3.2.6 **Sectoral eligibility**

The following sectors may not receive this aid:

- (a) primary production of agricultural products
- (b) processing and marketing of agricultural products if:
  - (i) the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or

- (ii) the aid is conditional on being partly or entirely passed on to primary producers.

### 3.2.7 Aid limits

The limits depend on the form of assistance (grants, loans, or guarantees). A beneficiary can receive support through a mix of the aid instruments referred to above provided that the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account in order to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument.

Note that the loans or guarantees may be charged for at rates less than market rates, and there is no difference in the amounts that can be offered even if the rates charged for the loan or guarantee are zero. The aid limits have been calculated on the assumption of zero charges, therefore this practice would be quite legitimate if SOSE considered it appropriate for the project.

For different periods of loans and guarantees the ceilings are the same as the notification thresholds in the table in the section below.

### 3.2.8 Notification threshold

For this type of aid the notification threshold is the same as the State aid ceiling. If a business receives more than one award of this type of aid (under this article) they have to be accumulated together for purposes of the notification threshold. **Other aid types (i.e. under other GBER articles) for the same project do not need to be cumulated for the notification threshold.**

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Start-up aid for newly created Small Enterprises anywhere (Art 22) – grant	€600,000	Grant or grant equivalents if phased grant release, per undertaking
Start-up aid for newly created Small Enterprises anywhere (Art 22) – loans	€3,000,000 €2,500,000 €2,142,857 €1,875,000 €1,666,667	Loan term 1 – 5 years per firm per undertaking Loan term 6 years per Loan term 7 years per Loan term 8 years Loan term 9 years

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
	€1,500,000	Loan term 10 years
Start-up aid for newly created Small Enterprises anywhere (Art 22) – Guarantees	€2,500,000 €2,500,000 €2,812,500 €3,214,286 €3,750,000 €4,500,000	Per undertaking Guarantee lasting 10 years Guarantee lasting 9 years Guarantee lasting 8 years Guarantee lasting 7 years Guarantee lasting 6 years Guarantee lasting 5 years
Start-up aid for young innovative small enterprises (Art 22) (see below)	Double maximum amounts set out above	Per undertaking

### 3.3 Start-up aid for young innovative small enterprises – Article 22

As per rules for Specific rules for newly created small enterprises (<50 jobs) in section 3.2 above with the following exception:

#### 3.3.1 Eligible activities

Eligible undertakings shall be both small and innovative enterprises.

A small enterprise has 50 FTE employees and whose annual turnover and/or balance sheet does not exceed €10 million.

An “**innovative enterprise**” means an enterprise:

- (a) that can demonstrate, by means of an evaluation carried out by an external expert that it will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure; or
- (b) the research and development costs of which 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;

### 3.3.2 **Aid Limits**

The maximum amounts of State aid permitted are double those for starting up newly created small enterprises in the previous section.

Cumulation considerations - because this type of aid is not allocated to specific costs, there can be a difficulty for State granting bodies in ensuring that any offers of other types of aid do not result in a breach of the aid amounts for the eligible costs of the other aid. Under State aid cumulation rules, if more than one type of aid can be awarded for the same eligible costs, it is not permitted to allow the resulting aid levels to specific eligible costs to exceed the ceiling for the aid that is being considered.

## 3.4 **Aid for scouting costs – Article 24**

### 3.4.1 **Eligible activities**

Screening and due diligence for investors into SMEs

### 3.4.2 **Eligible firms**

All firms except those in agriculture and forestry sectors.

### 3.4.3 **Eligible costs**

The eligible costs shall be the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings prior to receiving “Risk Finance to SMEs” aid or “Newly Created Small Enterprises/Small Innovative Enterprises”.

### 3.4.4 **Geographic eligibility**

All of the SOSE area.

### 3.4.5 **Type of assistance**

Assistance would normally be as grant or loan.

It would be theoretically possible to use guarantees as well, provided the guarantee is provided in a way that allows the Grant Equivalence to be calculated in accordance with the EC guidelines on guarantees.

### 3.4.6 **Sectoral eligibility**

The following sectors may not receive this aid:

- (a) primary production of agricultural products;
- (b) processing and marketing of agricultural products if:
  - (i) the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
  - (ii) the aid is conditional on being partly or entirely passed on to primary producers.

#### 3.4.7 Aid limits

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

#### 3.4.8 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Screening and due diligence for investors into SMEs (Art 24)	No limit set	

### 4 AID FOR RESEARCH & DEVELOPMENT & INNOVATION (“R&D&I”)

Support under R&D&I covers aid for R&D, investment aid for research infrastructures, innovation clusters, innovation aid for SMEs, process and organisational innovation, R&D in the fishery and aquaculture sector that benefits all firms in the sector.

#### 4.1 Aid for research and development projects – Article 25

##### 4.1.1 Eligible activities

The aided part of the research and development project shall completely fall within one or more of the following categories:

- (a) **fundamental research** - experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view;
- (b) **industrial research** - the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant

improvement in existing products, processes or services. It comprises the creation of components parts 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;

- (c) **experimental development** - 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. This may also include, 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;
- (d) **feasibility studies** - the evaluation and analysis of the potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success.

Aid may be awarded to R&D projects that have been awarded a “Seal of Excellence” quality label under the Horizon 2020 SME-instrument (that is, there is deemed to be no State aid value in the award of the seal for purposes of eligibility and complying with the aid limits).

#### 4.1.2 **Eligible firms**

No sectoral restrictions, large firms and SMEs.

#### 4.1.3 **Eligible costs**

The eligible costs of research and development projects shall be allocated to a specific category of research and development and shall be the following:

- (a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
- (b) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible;
- (c) costs for of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;
- (d) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
- (e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project.

The eligible costs for feasibility studies shall be the costs of the study.

**4.1.4 Types of assistance**

Grant or loan.

**4.1.5 Geographic eligibility**

All of the SOSE area.

**4.1.6 Conditions attaching to the State aid**

Note that there is no condition preventing the sale of the R&D results outside the company or region.

**4.1.7 Aid limits**

<b>Type of Research</b>	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
Fundamental research	100%	100%	100%
Industrial research	70%	60%	50%

Type of Research	Small firm	Medium firm	Large firm
Experimental development	45%	35%	25%
Feasibility studies	70%	60%	50%

The aid intensities for industrial research and experimental development may be increased 15%, up to a cap of 80% if one of the following conditions is fulfilled:

Either:

- (a) the project involves effective collaboration:
- (i) between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State aid in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70% of the eligible costs; or
  - (ii) between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10% of the eligible costs and have the right to publish their own research results; or
- (b) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.

The maximum rates would thus be:

Type of Research	Small firm	Medium firm	Large firm
Industrial research	80%	75%	50%
Experimental development	60%	50%	40%

#### 4.1.8 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
R&D - Fundamental Research Project (Art 25)	€40m grant	Per project per undertaking

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
	€60m repayable advance  €80m grant	In the form of repayable advances = advance plus interest at EU discount rate  If part of a Eureka project or implemented by a joint undertaking
R&D – Industrial Research Project (Art 25)	€20m grant  €30m repayable advance  €40m grant	Per project per undertaking  In the form of repayable advances = advance plus interest at EU discount rate  If part of a Eureka project or implemented by a joint undertaking
R&D – Experimental Development Project	€15m grant  €22.5m repayable advance  €30m grant	Per project per undertaking  In the form of repayable advances = advance plus interest at EU discount rate  If part of a Eureka project or implemented by a joint undertaking
R&D – Feasibility Studies for R&D Projects (Art 25)	€7.5m	Per study

## 4.2 Investment for research infrastructures – Article 26

### 4.2.1 Eligible activities

Aid for construction or upgrade of research infrastructures that perform economic activities.

### 4.2.2 Eligible firms

No sectoral restrictions, large firms and SMEs.

#### 4.2.3 **Eligible costs**

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

#### 4.2.4 **Types of assistance**

Grant or loan.

#### 4.2.5 **Conditions attaching to the State aid**

Where a research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.

The price charged for the operation or use of the infrastructure shall correspond to a market price.

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

Where a research infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid

#### 4.2.6 **Geographic eligibility**

All of the SOSE area.

#### 4.2.7 **Sectoral eligibility**

No restrictions.

#### 4.2.8 **Aid limits**

The aid intensity in terms of grant or grant equivalent shall not exceed 50% of the eligible costs.

#### 4.2.9 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Investment in Research Infrastructures (Art 26)	€20m	Per infrastructure.

### 4.3 Aid for innovation clusters – Article 27

#### 4.3.1 Eligible activities

Aid for the setting up, marketing and operating of innovation clusters

#### 4.3.2 Eligible firms

The legal entity operating the innovation cluster (cluster organisation).

#### 4.3.3 Eligible costs

The eligible costs of operating aid for innovation clusters shall be the personnel and administrative costs (including overhead costs) relating to:

- (a) animation of the cluster to facilitate collaboration, information sharing and the provision or channelling of specialised and customised business support services;
- (b) marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;
- (c) management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation;
- (d) investment costs in construction or upgrade of innovation clusters, including both tangible assets This precludes assisting a property developer via this article, unless the property developer also becomes the cluster operator.

#### 4.3.4 **Type of assistance**

Grant or loan to the legal entity operating the innovation cluster (cluster organisation). Operating aid may be granted for the operation of innovation clusters. It shall not exceed ten years.

#### 4.3.5 **Geographic eligibility**

All of the SOSE area.

#### 4.3.6 **Sectoral eligibility**

No restrictions.

#### 4.3.7 **Aid limits**

The aid intensities in terms of grant or grant equivalence are as follows:

	<b>All firms</b>
Investment aid for innovation clusters	50%
Investment aid for innovation clusters (in non-predefined article 107(3)(c) areas)	55%
Operating aid for innovation clusters	50%

#### 4.3.8 **Conditions attached to the State aid**

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

The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs.

#### 4.3.9 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Investing in and running innovation clusters (Art 27)	€7.5m	Per cluster

#### 4.4 Innovation aid for SMEs – Article 28

##### 4.4.1 Eligible activities

Aid for the revenue costs of innovation for SMEs

##### 4.4.2 Eligible firms

SMEs.

##### 4.4.3 Eligible costs

The eligible costs shall be the following:

- (a) costs for obtaining, validating and defending patents and other intangible assets;
- (b) costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;
- (c) costs for innovation advisory and support services.

##### 4.4.4 Type of assistance

Grant or loan

##### 4.4.5 Geographic eligibility

All of the SOSE area.

##### 4.4.6 Sectoral eligibility

No restrictions.

#### 4.4.7 Aid limits

The aid intensity in terms of grant or grant equivalence shall not exceed 50% of the eligible costs.

In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100% of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200,000 per undertaking within any three year period. Note that despite the similarity between this Article and De Minimis aid, the three year period is “any 3 year period” which is not further defined; our interpretation is that this must be read as 3\*365 days, and not the fiscal years that are used for De Minimis aid.

#### 4.4.8 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Revenue costs of innovation for SMEs (Art 28)	€5m	Per undertaking per project

### 4.5 Aid for process and organisation innovation – Article 29

#### 4.5.1 Eligible activities

Revenue costs for process and organisational innovation

#### 4.5.2 Eligible firms

Aid to large undertakings shall only be compatible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30% of the total eligible costs.

SMEs may be assisted independently of large firms.

#### 4.5.3 Eligible costs

The eligible costs shall be the following:

- (a) personnel costs;
- (b) costs of instruments, equipment, buildings and land to the extent and for the period used for the project;

- (c) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions;
- (d) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project.

**4.5.4 Types of assistance**

Grants or loans

**4.5.5 Geographic eligibility**

All of the SOSE area.

**4.5.6 Aid limits**

The aid intensity in terms of grant or grant equivalence shall not exceed 50% of the eligible costs.

	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
All projects	50%	50%	15%

**4.5.7 Notification threshold**

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Revenue costs for process and organizational innovation (Art 29)	€7.5m	Per undertaking per project

**4.6 Aid for R&D in the fishery and aquaculture sector – Article 30**

This refers to research in the common interest of the sector by research organisations.

**4.6.1 Eligible activities**

The aided project shall be of interest to all undertakings in the particular fisheries or aquaculture sector or sub-sector concerned.

#### 4.6.2 **Eligible firms**

Aid shall be granted directly to the research and knowledge-dissemination organisation and shall not involve the direct granting of non-research related aid to an undertaking producing, processing or marketing fishery or aquaculture products.

We would, accordingly anticipate the research being carried out by a research organisation rather than a fish producer or processor. However, assisting a commercial undertaking would be permitted provided the conditions are met.

#### 4.6.3 **Eligible costs**

The eligible costs of research and development projects shall be allocated to a specific category of research and development and shall be the following:

- (a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
- (b) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible;
- (c) costs for of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;
- (d) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
- (e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project.

#### 4.6.4 **Types of assistance**

Grant or loan.

#### 4.6.5 **Geographic eligibility**

All of the SOSE area

#### 4.6.6 Sectoral eligibility

Fisheries and aquaculture

#### 4.6.7 Aid limits

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

#### 4.6.8 Conditions attached to the State aid

Prior to the date of the start of the aided project the following information shall be published on the internet:

- (a) that the aided project will be carried out;
- (b) the goals of the aided project;
- (c) the approximate date for the publication of the results expected from the aided project and its place of publication on the internet;
- (d) a reference that the results of the aided project will be available to all undertakings active in the particular sector or sub-sector concerned at no cost.

The results of the aided project shall be made available on internet from the end date of the aided project or the date on which any information concerning those results is given to members of any particular organisation, whatever comes first. The results shall remain available on internet for a period of at least five years starting from the end date of the aided project.

#### 4.6.9 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
R&D in the fisheries and aquaculture sectors (Art 30)	No limit set.	Special rules for fisheries require that results are of common interest and are widely publicised

## 5 **TRAINING AID – ARTICLE 31**

### 5.1 **Eligible activities**

This aid covers the costs of training for companies. Where the beneficiaries are commercial undertakings operating in markets that are likely to involve trade between Member States of the EU / EEA, then the subsidy must be considered as a State aid in the same way that a grant would be.

Aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training.

Note that support for further education and Apprenticeships are not classified as State aid.

### 5.2 **Eligible firms**

SMEs and large firms

### 5.3 **Eligible costs**

The eligible costs shall be the following:

5.3.1 trainers' personnel costs, for the hours during which the trainers participate in the training;

5.3.2 trainers' and trainees' operating costs directly relating to the training project such as travel expenses, accommodation costs, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project;

5.3.3 costs of advisory services linked to the training project;

5.3.4 trainees' personnel costs (wages plus National Insurance) and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.

### 5.4 **Types of assistance**

Grant or loan

### 5.5 **Geographic eligibility**

All of the SOSE area.

## 5.6 Sectoral eligibility

All sectors

## 5.7 Aid limits

There is no distinction between general and specific training.

The aid intensity in terms of grant or grant equivalence shall not exceed the following % of eligible costs:

	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
Training grant level	70%	60%	50%
If training given to workers with disabilities or disadvantaged workers	70%	70%	60%

Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 100% of the eligible costs provided that the following conditions are met:

5.7.1 the trainees are not active members of the crew but are supernumerary on board;  
and

5.7.2 the training is carried out on board of ships entered in Union registers.

## 5.8 Notification threshold

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Training aid (Art 31)	€2m	Per project

## 6 AID FOR DISADVANTAGED WORKERS AND FOR WORKERS WITH DISABILITIES

Support under this section covers aid for the recruitment of disadvantaged workers or workers with disabilities.

6.1 **Aid for the recruitment of disadvantaged workers in the form of wage subsidies – Article 32**

6.1.1 **Eligible activities**

A “disadvantaged worker” means any person who:

- (a) has not been in regular paid employment for the previous six months; or
- (b) is between 15 and 24 years of age; or
- (c) has not attained an upper secondary educational or vocational qualification (International Standard Classification of Education 3) or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment; or
- (d) is over the age of 50 years; or
- (e) lives as a single adult with one or more dependents; or
- (f) works in a sector or profession in a Member State where the gender imbalance is at least 25% higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
- (g) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment.

6.1.2 **Geographic eligibility**

All of the SOSE area

6.1.3 **Sectoral eligibility**

All sectors.

6.1.4 **Aid limits**

The aid intensity in terms of grant or grant equivalence shall not exceed 50 % of eligible cost.

6.1.5 **Eligible costs**

Eligible costs shall be the wage costs over a maximum period of 12 months following recruitment of a disadvantaged worker. Where the worker concerned is a severely

disadvantaged worker, eligible costs shall be the wage costs over a maximum period of 24 months following recruitment.

A “**severely disadvantaged worker**” means any person who:

- (a) has not been in regular paid employment for at least 24 months; or
- (b) has not been in regular paid employment for at least 12 months and belongs to one of the categories (b) to (g) mentioned under the definition of “disadvantaged worker”.

#### 6.1.6 **Types of assistance**

Grant or loan.

#### 6.1.7 **Conditions attaching to the State aid**

Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

Except in the case of lawful dismissal for misconduct, the disadvantaged workers shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts.

If the period of employment is shorter than 12 months, or 24 months in the case of severely disadvantaged workers, the aid shall be reduced pro rata accordingly.

#### 6.1.8 **Notification threshold**

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Wage subsidies for recruiting disadvantaged workers (Art 32)	€5m	Per undertaking per year

6.2 **Aid for the employment of workers with disabilities in the form of wage subsidies – Article 33**

6.2.1 **Eligible activities**

A “**worker with disabilities**” means any person who:

- (a) is recognised as worker with disabilities under national law; or
- (b) has long-term physical, mental, intellectual or sensory impairment(s) which, in interaction with various barriers, may hinder their full and effective participation in a work environment on an equal basis with other workers;

6.2.2 **Geographic eligibility**

All of SOSE area.

6.2.3 **Sectoral eligibility**

All sectors.

6.2.4 **Aid limits**

The aid intensity in terms of grant or grant equivalence shall not exceed 75 % of eligible costs:

6.2.5 **Eligible costs**

Eligible costs shall be the wage costs over any given period during which the worker with disabilities is employed.

6.2.6 **Types of Assistance**

Grant or loan.

6.2.7 **Conditions attaching to the State aid**

Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disabilities, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

Except in the case of lawful dismissal for misconduct, the workers with disabilities shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements which are legally binding for the undertaking and governing employment contracts.

**6.2.8 Notification threshold**

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Wage subsidies for recruiting workers with disabilities (Art 33)	€10m	Per undertaking per year

**6.3 Aid for compensating the additional costs of employing workers with disabilities - Article 34**

**6.3.1 Eligible activities**

The assistance provided shall consist of measures to compensation for the additional costs of employing workers with disabilities.

**6.3.2 Geographic eligibility**

All of the SOSE area.

**6.3.3 Sectoral eligibility**

All sectors.

**6.3.4 Aid limits**

The aid intensity in terms of grant or grant equivalent shall not exceed 100 % of eligible costs.

**6.3.5 Eligible costs**

- (a) Costs of adapting the premises.
- (b) Costs of employing staff solely for time spent on the assistance of the workers with disabilities and of training such staff to assist workers with disabilities.

- (c) Costs of adapting or acquiring equipment, or acquiring and validating software for use by workers with disabilities, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not workers with disabilities.
- (d) Costs directly linked to transport of workers with disabilities to the working place and for work related activities.
- (e) Wage costs for the hours spent by a worker with disabilities on rehabilitation.
- (f) Where the beneficiary provides sheltered employment, the costs of constructing, installing or modernising the production units of the undertaking concerned, and any costs of administration and transport, provided that such costs result directly from the employment of workers with disabilities.

**6.3.6 Types of assistance**

Grant or loan.

**6.3.7 Notification threshold**

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Aid for the additional costs of employing workers with disabilities (Art 34)	€10m	Per undertaking per year

**6.4 Aid for compensating the costs of assistance provided to disadvantaged workers - Article 35**

**6.4.1 Eligible activities**

The assistance provided shall consist of measures to support the disadvantaged worker's autonomy and adaptation to the work environment, in accompanying the worker in social and administrative procedures, facilitation of communication with the entrepreneur and managing conflicts.

#### 6.4.2 **Geographic eligibility**

All of the SOSE area.

#### 6.4.3 **Sectoral eligibility**

All sectors.

#### 6.4.4 **Aid limits**

The aid intensity in terms of grant or grant equivalent shall not exceed 50 % of eligible costs.

#### 6.4.5 **Eligible costs**

(a) Employing staff solely for times spent on the assistance of the disadvantaged workers over a maximum period of 12 months following recruitment of as disadvantaged worker or over a maximum period of 24 months following recruitment of a severely disadvantaged worker.

(b) Training such staff to assist disadvantaged workers.

#### 6.4.6 **Types of assistance**

Grant or loan.

#### 6.4.7 **Notification threshold**

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Compensating the costs of assistance provided to disadvantaged workers	€5m	Per undertaking per year

## 7 **AID FOR ENVIRONMENTAL PROTECTION**

Support under environmental protection covers aid for firms to go beyond EU standards environmental protection or to increase the levels if no EU standards exist; early adaptation to future EU Standards; investment aid for energy efficiency; high efficiency cogeneration; promotion of energy from renewable sources; aid for remediation of contaminated sites; district heating and cooling; waste recycling and re-utilisation; aid for energy infrastructure; environmental studies.

## 7.1 Aid for going beyond EU environmental protection standards – Article 36

### 7.1.1 Eligible activities

Aid to support Investment aid enabling undertakings to go beyond EU standards for environmental protection or to increase the level of environmental protection in the absence of EU Standards.

The investment shall fulfil one of the following conditions:

- (a) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable EU standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
- (b) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of EU standards.

Aid shall not be granted where investments are undertaken to ensure that undertakings comply with EU standards already adopted and not yet in force, except where:

- (a) the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted EU standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date;
- (b) retrofitting of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the EU standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, they do not apply retroactively to those vehicles.

### 7.1.2 Geographic eligibility

All of SOSE area.

### 7.1.3 Sectoral eligibility

Aid for the processing and marketing of agricultural products may be given except;

- (a) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or

- (b) when the aid is conditional on being partly or entirely passed on to primary producers.

This does not cover the fisheries and aquaculture or fish processing sectors.

**7.1.4 Aid limits**

The aid intensity in terms of grant or grant equivalence shall not exceed the following % of eligible costs:

	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
For projects exceeding EU environmental protection standards (where they are located in non-predefined article 107(3)(c) areas)	65%	55%	45%
For projects exceeding EU environmental protection standards	60%	50%	40%

**7.1.5 Eligible costs**

The eligible costs shall be the extra investment costs necessary to go beyond the applicable EU standards or to increase the level of environmental protection in the absence of EU standards. They shall be determined as follows:

- (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
- (b) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs. The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

**7.1.6 Types of Assistance**

Grant or loan.

### 7.1.7 Conditions attaching to the State aid

The expenditure on eligible costs must not have commenced before an application for assistance towards the project has been submitted.

### 7.1.8 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Investment aid to exceed environmental standards (Art 36)	€15m	Per undertaking per project

## 7.2 Investment aid for early adaptation to future EU standards – Article 37

### 7.2.1 Eligible activities

This covers investment aid enabling undertakings to achieve energy efficiency before the date of entry into force of new EU Standards.

### 7.2.2 Geographic eligibility

All of the SOSE area.

### 7.2.3 Sectoral eligibility

Does not cover the fisheries and aquaculture or fish processing sectors.

### 7.2.4 Aid limits

The aid intensity in terms of grant or grant equivalence shall not exceed the following % of eligible costs:

	Small firm	Medium firm	Large firm
For all projects where implementation and finalisation of the investment takes place between 1 and 3 years before EU standard comes into force (where they are located in non-predefined article 107(3)(c) areas)	20%	15%	10%

	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
For all projects where implementation and finalisation of the investment takes place between 1 and 3 years before EU standard comes into force	15%	10%	5%
For all projects where implementation and finalisation of investment takes place >3 years before EU standard comes into force (where they are located in non-predefined article 107(3)(c) areas)	25%	20%	15%
For all projects where implementation and finalisation of investment takes place >3 years before EU standard comes into force	20%	15%	10%

#### 7.2.5 **Eligible costs**

The eligible costs shall be the extra investment costs necessary to go beyond the applicable Union standards. They shall be determined as follows:

- (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
- (b) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs. The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

#### 7.2.6 **Types of Assistance**

Grant or loan.

### 7.2.7 Conditions attaching to the State aid

The Union standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.

### 7.2.8 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Aid for extra costs of early Adoption of New Environmental Standards (Art 37)	€15m	Per undertaking per project

## 7.3 Investment aid for energy efficiency measures – Article 38

### 7.3.1 Eligible activities

Aid to support investments to achieve energy efficiency.

### 7.3.2 Geographic eligibility

All of the SOSE area.

### 7.3.3 Sectoral eligibility

Does not cover the fisheries and aquaculture or fish processing sectors.

### 7.3.4 Aid limits

The aid intensity in terms of grant or grant equivalence shall not exceed the following % of eligible costs:

	Small firm	Medium firm	Large firm
For all projects	50%	40%	30%
For all projects located in non-predefined article 107(3)(c) areas	55%	45%	35%

### 7.3.5 Eligible costs

The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined as follows:

- (a) where the costs of investing in energy efficiency can be identified in the total investment cost as a separate investment, this energy efficiency-related cost shall constitute the eligible costs;
- (b) in all other cases, the costs of investing in energy efficiency are identified by reference to a similar, less energy efficient investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitutes the eligible costs. The costs not directly linked to the achievement of a higher level of energy efficiency shall not be eligible.

### 7.3.6 Types of Assistance

Grant or loan.

### 7.3.7 Conditions attaching to State aid

Aid shall not be granted under this Article where improvements are undertaken to ensure that undertakings comply with EU standards already adopted, even if they are not yet in force.

### 7.3.8 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Aid for extra costs of energy saving investments (Art 38)	€15m	Per undertaking per project

## 7.4 Aid for energy efficiency projects in buildings – Article 39

### 7.4.1 Eligible activities

Eligible for aid under the present Article are energy efficiency projects relating to buildings.

Energy efficiency improvements undertaken to ensure that the beneficiary complies with EU standards which have already been adopted shall not be exempted from the notification requirement under this Article.

#### 7.4.2 **Types of Assistance**

The aid shall be granted in the form of an endowment, equity, a guarantee or loan to an energy efficiency fund or other financial intermediary, which shall fully pass it on to the final beneficiaries being the building owners or tenants.

#### 7.4.3 **Conditions attaching to the State aid**

Member States can set up energy efficiency funds and/or can use financial intermediaries when providing energy efficiency aid. The following conditions must then be fulfilled:

- (a) financial intermediary managers, as well as energy efficiency fund managers shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws. In particular, there shall be no discrimination on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries and energy efficiency fund managers may be required to fulfil predefined criteria objectively justified by the nature of the investments;
- (b) the independent private investors shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws aimed at establishing the appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit-sharing shall be given preference over downside protection. If the private investors are not selected by such a call, the fair rate of return to the private investors shall be established by an independent expert selected via an open, transparent and non-discriminatory call;
- (c) in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25% of the total investment;
- (d) in the case of guarantees, the guarantee rate shall be limited to 80% and total losses assumed by a Member State shall be capped at 25% of the underlying guaranteed portfolio. Only guarantees covering the expected losses of the underlying guaranteed portfolio can 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;

- (e) the investors shall be allowed to be represented in the governance bodies of the energy efficiency fund or financial intermediary, such as the supervisory board or the advisory committee;
- (f) the energy efficiency fund or financial intermediary shall be established according to the applicable laws and the Member State shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the energy efficiency aid measure.

Financial intermediaries, including energy efficiency funds shall be managed on a commercial basis and shall ensure profit-driven financing decisions. This is considered to be the case when the financial intermediary and, as the case may be, the managers of the energy efficiency fund fulfil the following conditions:

- (a) they are obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
- (b) their remuneration conforms to market practices. This requirement is considered to be met where the manager is selected through an open, transparent and non-discriminatory call, based on objective criteria linked to experience, expertise and operational and financial capacity;
- (c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
- (d) they shall set out an investment strategy, criteria and the proposed timing of investments in energy efficiency projects, establishing the ex-ante financial viability and their expected impact on energy efficiency;
- (e) a clear and realistic exit strategy shall exist for the public funds invested in the energy efficiency fund or granted to the financial intermediary, allowing the market to finance energy efficiency projects when the market is ready to do so.

#### **7.4.4 Geographic eligibility**

All of the SOSE area.

#### **7.4.5 Sectoral eligibility**

Does not cover the fisheries and aquaculture or fish processing sectors.

#### 7.4.6 Aid Limits

The energy efficiency aid shall leverage additional investment from private investors reaching at minimum 30% of the total financing provided to an energy efficiency project. When the aid is provided by an energy efficiency fund, the leverage of private investment can be done at the level of the energy efficiency fund and/or at the level of the energy efficiency projects, so as to achieve an aggregate minimum 30% of the total financing provided to an energy efficiency project.

The aid granted by the energy efficiency fund or other financial intermediary to the eligible energy efficiency projects may take the form of loans or guarantees. The nominal value of the loan or the amount guaranteed shall not exceed EUR 10 million per project at the level of the final beneficiaries. The guarantee should not exceed 80% of the underlying loan.

#### 7.4.7 Eligible Costs

The eligible costs shall be the overall costs of the energy efficiency project.

The repayment by the building owners to the energy efficiency fund or other financial intermediary shall not be less than the nominal value of the loan.

#### 7.4.8 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Aid for extra costs of energy saving investments in buildings (Art 39)	€10m	Per undertaking per project in the form of loans or guarantees

### 7.5 Investment aid for high-efficiency cogeneration – Article 40

#### 7.5.1 Eligible activities

The investment aid shall be granted in respect of newly installed or refurbished capacities only.

The new cogeneration unit shall provide overall primary energy savings compared to separate production of heat and electricity as provided for by the EU Directive on Energy Efficiency<sup>9</sup>. The improvement of an existing cogeneration unit or conversion

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<sup>9</sup> EU Directive 2012/27 on Energy Efficiency.

of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.

**7.5.2 Geographic eligibility**

All of the SOSE area.

**7.5.3 Sectoral eligibility**

Does not cover the fisheries and aquaculture or fish processing sectors.

**7.5.4 Aid limits**

The table below gives the maximum State aid levels in Grant / grant equivalence as % of eligible costs:

	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
For all projects high efficiency co-generation projects	65%	55%	45%
For projects high efficiency co-generation projects located in non-predefined article 107(3)(c) areas	70%	60%	50%

**7.5.5 Eligible Costs**

The eligible costs shall be the extra investment costs for the equipment needed for the installation to operate as a high-efficiency cogeneration installation, compared to conventional electricity or heating installations of the same capacity or the extra investment cost to upgrade to a higher efficiency when an existing installation already meets the high-efficiency threshold.

**7.5.6 Types of Assistance**

Grant or loan.

### 7.5.7 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Aid for extra costs of high efficiency co-generation (Art 40)	€15m	Per undertaking per project

## 7.6 Capital investment in the promotion of energy from renewable sources – Article 41

### 7.6.1 Eligible activities

To enable the beneficiary to install power plant or heating facilities to produce energy from renewable energy sources; aid is for the additional costs of investment from renewable sources versus less environmentally-friendly sources as shown in (a), (b) and (c) under Eligible Costs.

Investment aid for the production of bio-fuels shall be exempted from the notification requirement only to the extent that the aided investments are used for the production of sustainable bio-fuels other than food-based bio-fuels. However, investment aid to convert existing food-based bio-fuel plants into advanced bio-fuel plants shall be permitted provided that the food-based production would be reduced commensurate to the new capacity.

Aid shall not be granted for bio-fuels which are subject to a supply or blending obligation. Aid shall not be granted for hydropower installations that do not comply with the EU Water Framework Directive - integrated river basin management for Europe<sup>10</sup>.

The investment aid shall be granted to new installations only.

### 7.6.2 Geographic eligibility

All of SOSE area.

### 7.6.3 Sectoral eligibility

Does not cover the fisheries and aquaculture or fish processing sectors.

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<sup>10</sup> Directive 2000/60/EC.

#### 7.6.4 Eligible Costs

The eligible costs shall be the extra investment costs necessary to promote the production of energy from renewable sources. They shall be determined as follows:

- (a) where the costs of investing in the production of energy from renewable sources can be identified in the total investment cost as a separate investment, for instance as a readily identifiable add-on component to a pre-existing facility, this renewable energy-related cost shall constitute the eligible costs;
- (b) where the costs of investing in the production of energy from renewable sources can be identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid, this difference between the costs of both investments identifies the renewable energy- related cost and constitutes the eligible costs;
- (c) for certain small installations where a less environmentally friendly investment cannot be established as plants of a limited size do not exist, the total investment costs to achieve a higher level of environmental protection shall constitute the eligible costs. The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

#### 7.6.5 Types of assistance

Grant or loan.

#### 7.6.6 Conditions attaching to the State aid

No aid shall be granted or paid out after the installation started operations and aid shall be independent from the output.

#### 7.6.7 Aid limits

The table below gives the maximum State aid levels in Grant / grant equivalence as % of eligible costs:

	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
For projects where eligible costs are calculated on basis of (a) or (b) above	65%	55%	45%
For projects located in non-predefined article 107(3)(c) areas	70%	60%	50%

	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
where eligible costs are calculated on basis of (a) or (b) above			
For projects where eligible costs are calculated on basis of (c) above	50%	40%	30%
For projects located in non-predefined article 107(3)(c) areas where eligible costs are calculated on basis of (c) above	55%	45%	35%

Where aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid intensity may reach 100% of the eligible costs. Such a bidding process shall be non-discriminatory and provide for the participation of all interested undertakings. The budget related to the bidding process shall be a binding constraint in the sense that not all participants can receive aid and the aid shall be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations.

#### 7.6.8 Notification threshold

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Aid for extra capital costs of renewable energy production (Art 41)	€15m	Per undertaking per project

### 7.7 Investment aid for remediation of contaminated sites – Article 45

#### 7.7.1 Eligible activities

The objective is to bring contaminated land, brown-field land and derelict land back into productive use by addressing the detrimental effects of previous usage. This is related to pollution and contamination only and not a derelict structure.

The investment shall lead to the repair of the environmental damage, including damage to the quality of the soil or of surface water or groundwater.

#### 7.7.2 **Geographic eligibility**

All of SOSE area.

#### 7.7.3 **Sectoral eligibility**

Does not cover the fisheries and aquaculture or fish processing sectors.

#### 7.7.4 **Aid limits**

The maximum State aid level in Grant / grant equivalence is 100% of eligible costs:

#### 7.7.5 **Eligible Costs**

The eligible costs shall be the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may be considered as eligible investment in the case of the remediation of contaminated sites.

Evaluations of the increase in value of the land resulting from remediation shall be carried out by an independent expert.

#### 7.7.6 **Types of Assistance**

Grant or loan.

#### 7.7.7 **Conditions attaching to the State aid**

Where the legal or physical person liable for the environmental damage is identified, that person must finance the remediation in accordance with the “polluter pays” principle, and no State aid shall be granted. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, the person responsible for the remediation or decontamination work may receive State aid.

#### 7.7.8 **Notification threshold**

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Remediating contaminated sites (Art 45)	€20m	Per undertaking per project

## 7.8 Investment aid for energy efficient district heating and cooling – Article 46

### 7.8.1 Eligible activities

Aid for production and distribution of energy efficient district heating and cooling.

### 7.8.2 Geographic eligibility

All of SOSE area.

### 7.8.3 Sectoral eligibility

Does not cover the fisheries and aquaculture or fish processing sectors.

### 7.8.4 Aid limits

The table below gives the maximum State aid levels in Grant / grant equivalence as % of eligible costs:

	<b>Small firm</b>	<b>Medium firm</b>	<b>Large firm</b>
For energy efficient district heating/cooling projects	65% (subject to clawback)	55% (subject to clawback)	45% (subject to clawback)
For energy efficient district heating/cooling projects located in non-predefined article 107(3)(c) areas	70% (subject to clawback)	60% (subject to clawback)	50% (subject to clawback)

### 7.8.5 Eligible Costs

The eligible costs for the production plant shall be the extra costs needed for the construction, expansion and refurbishment of one or more generation units to operate as an energy efficient district heating and cooling system compared to a conventional production plant. The investment shall be an integral part of the energy efficient district heating and cooling system.

The eligible costs for the distribution network shall be the investment costs.

The aid amount for the distribution network shall not exceed the difference between the eligible costs and the operating profit. The operating profit shall be deducted from the eligible costs *ex ante* or through a claw-back mechanism.

#### 7.8.6 Types of Assistance

Grant or loan.

#### 7.8.7 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Extra capital costs of energy efficient district heating/cooling (Art 46)	€20m	Per undertaking per project

### 7.9 Investment aid for waste recycling and re-utilisation – Article 47

#### 7.9.1 Eligible activities

The investment aid shall be granted to a firm for the recycling and re-utilisation of waste generated by other undertakings.

The recycled or re-used materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner. Aid to waste recovery operations other than recycling is not eligible under this Article.

The aid shall not indirectly relieve the polluters from a burden that should be borne by them under EU law, or from a burden that should be considered a normal company cost.

The investment shall not merely increase demand for the materials to be recycled without increasing collection of those materials.

The investment shall go beyond the state of the art.

Aid for investments relating to the recycling and re-utilisation of the beneficiary's own waste shall not be exempt from the notification requirement under this Article.

#### 7.9.2 Geographic eligibility

All of the SOSE area.

#### 7.9.3 Sectoral eligibility

Does not cover the fisheries and aquaculture or fish processing sectors.

#### 7.9.4 Aid limits

The table below gives the maximum State aid levels in Grant / grant equivalence as % of eligible costs:

	Small firm	Medium firm	Large firm
For waste recycling and re-utilisation projects	55%	45%	35%
For waste recycling and re-utilisation projects located in non-predefined article 107(3)(c) areas	60%	50%	40%

#### 7.9.5 Eligible Costs

The eligible costs shall be the extra investment costs necessary to realise an investment leading to better or more efficient recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence the aid.

#### 7.9.6 Types of Assistance

Grant or loan.

#### 7.9.7 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Investment in recycling and re-using waste produced by third parties (Art 47)	€15m	Per undertaking per project

### 7.10 Investment aid for energy infrastructure – Article 48

#### 7.10.1 Eligible activities

Aid for energy infrastructures; for details see definitions at Part 1 of the Schedule.

#### 7.10.2 **Geographic eligibility**

Energy infrastructures located in non-predefined article 107(3)(c) areas.

#### 7.10.3 **Sectoral eligibility**

Does not cover the fisheries and aquaculture or fish processing sectors.

#### 7.10.4 **Aid limits**

The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante or through a claw-back mechanism.

#### 7.10.5 **Eligible Costs**

The eligible costs shall be the investment costs.

The energy infrastructure shall be subject to full tariff and access regulation according to internal energy market legislation. This would need to be established by technical investigation of what tariff and access legislation demands, starting with a statement from the applicant as to how they would comply.

Aid for investments in electricity and gas storage projects and oil infrastructure cannot be assisted under the GBER and would need to be submitted to the EC for prior approval.

#### 7.10.6 **Types of Assistance**

Grant or loan.

#### 7.10.7 **Notification threshold**

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Investment in energy infrastructures (Art 48)	€50m	Per undertaking per project

#### 7.11 **Aid for environmental studies – Article 49**

#### 7.11.1 Eligible activities

Aid for studies, including energy audits, directly linked to investments referred to in this Section.

#### 7.11.2 Geographic eligibility

All of SOSE area.

#### 7.11.3 Sectoral eligibility

Does not cover the fisheries and aquaculture or fish processing sectors.

#### 7.11.4 Aid limits

The aid intensity in terms of grant or grant equivalence shall not exceed the following:

	Small firm	Medium firm	Large firm
For all projects	70%	60%	50%

#### 7.11.5 Eligible Costs

Costs of the studies.

Aid shall not be granted to large undertakings for energy audits carried out under Article 8(4) of the EU Directive on Energy Efficiency<sup>11</sup>, unless the energy audit is carried out in addition to the mandatory energy audit under that Directive.

#### 7.11.6 Types of Assistance

Grant or loan.

#### 7.11.7 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Environmental studies for energy saving and renewables (Art 49)	€15m	Per undertaking per project

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<sup>11</sup> Directive 2012/27/EU.

## 8 AID FOR BROADBAND INFRASTRUCTURE – ARTICLE 52

Please note there is a provision within the GBER Regional aid (Article 14) to undertake broadband projects as an alternative to aid for broadband infrastructure under this Article. There is also a UK nationally approved scheme for Broadband called “BDUK” and the option to use De Minimis aid and SME start-up aid.

### 8.1.1 Eligible activities

Investment in broadband networks in areas with no prospect of private sector provision within three years unless State aid is given.

### 8.1.2 Geographic eligibility

The investment shall be located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within three years from the moment of publication of the planned aid measure, which shall also be verified through an open public consultation.

### 8.1.3 Sectoral eligibility

Ineligible sectors are:

- (a) fishing, fish processing and aquaculture;
- (b) primary production of agricultural products, including the growing of trees;
- (c) aid for the processing and marketing of agricultural products may be given except:
  - (i) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
  - (ii) when the aid is conditional on being partly or entirely passed on to primary producers.

### 8.1.4 Aid limits

The aid ceiling is dictated either by:

- (a) a competitive bidding process amongst commercial operators, respecting the principle of technology neutrality, which establishes the necessary

costs and the minimum aid level that would be necessary to stimulate investment; or

- (b) the aid equates to the costs of specific eligible works as follows:
  - (i) investment costs for the deployment of a passive broadband infrastructure;
  - (ii) investment costs of broadband-related civil engineering works;
  - (iii) investment costs for the deployment of basic broadband networks ; and
  - (iv) investment costs for the deployment of next generation access (“**NGA**”) networks.

For projects where the State aid exceeds €10m, a claw-back mechanism has the effect of reducing the aid intensity as net income grows.

#### 8.1.5 **Eligible Costs**

The eligible costs shall be dictated by the method of investment as indicated in aid limits above.

#### 8.1.6 **Types of Assistance**

Grant or loan.

#### 8.1.7 **Conditions attaching to the State aid**

The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process, and in the case of the method where competitors are allowed to specify the infrastructure the tender documents should respect the principle of technology neutrality.

The network operator shall offer the widest possible active and passive wholesale access, under fair and non- discriminatory conditions, including physical unbundling in the case of NGA networks. Such wholesale access shall be granted for at least seven years and the right of access to ducts or poles shall not be limited in time. In the case of aid for the construction of ducts, the ducts shall be large enough to cater for several cable networks and different network topologies.

The wholesale access price shall be based on the pricing principles set by the national regulatory authority and on benchmarks that prevail in other comparable, more competitive areas of the Member State or the Union taking into account the aid received by the network operator. The national regulatory authority shall be

consulted on access conditions, including pricing, and in the event of dispute between access seekers and the subsidised infrastructure operator.

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

#### 8.1.8 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Broadband infrastructure (Art 52)	€70m	Threshold based on total investment costs of the project (not the aid level)

## 9 AID FOR CULTURE AND HERITAGE CONSERVATION – ARTICLE 53

### 9.1 Eligible activities

The aid shall be granted for the following cultural purposes and activities:

- 9.1.1 museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;
- 9.1.2 tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;
- 9.1.3 intangible heritage in any form, including folklorist customs and crafts;
- 9.1.4 art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
- 9.1.5 cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- 9.1.6 writing, editing, production, distribution, digitisation and publishing of music and literature, including translations.

The aid may take the form of:

- 9.1.7 investment aid, including aid for the construction or upgrade of culture infrastructure;
- 9.1.8 operating aid.

Aid to press and magazines, whether they are published in print or electronically, shall not be eligible under this Article.

## 9.2 **Geographic eligibility**

All of the SOSE area.

## 9.3 **Sectoral eligibility**

Ineligible sectors are:

- 9.3.1 fishing, fish processing and aquaculture;
- 9.3.2 primary production of agricultural products, including the growing of trees;
- 9.3.3 aid to firms in the processing and marketing of agricultural products may be assisted except:
  - (a) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
  - (b) when the aid is conditional on being partly or entirely passed on to primary producers.

## 9.4 **Aid limits**

For investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism. The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period.

**“operating profit”** means the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid.

For operating aid, the aid amount shall not exceed what is necessary to cover the operating losses and a “reasonable profit” over the relevant period. This shall be ensured ex ante, on the basis of reasonable projections, or through a claw-back mechanism. See definition of “reasonable profit” at Part 1 of the Schedule.

For aid not exceeding €2 million, the maximum amount of aid may be set at 80% of eligible costs as an alternative to applying the method above.

For publishing of music and literature as defined in paragraph (f) in “Eligible Activities”, the maximum aid amount shall not exceed either the difference between the eligible costs and the project's discounted revenues or 70% of the eligible costs. The revenues shall be deducted from the eligible costs ex ante or through a clawback mechanism. The eligible costs shall be the costs for publishing of music and literature, including the authors' fees (copyright costs), translators' fees, editors' fees, other editorial costs (proofreading, correcting, reviewing), layout and pre- press costs and printing or e-publication costs.

#### 9.4.1 Eligible Costs

For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets, including:

- (a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80% of either the time or the space capacity per year is used for cultural purposes;
- (b) costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
- (c) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;
- (d) costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;
- (e) costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project.

For operating aid, the eligible costs shall be the following:

- (a) the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;
- (b) costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- (c) costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities;
- (d) operating costs directly relating to the cultural project or activity, such as rent or lease of real State aid cultural venues, travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan, lease and depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity; depreciation charges and the costs of financing are only eligible if they have not been covered by investment aid;
- (e) costs for personnel working for the cultural institution or heritage site or for a project;
- (f) costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.

#### 9.4.2 **Types of assistance**

Grant or loan.

#### 9.4.3 **Notification threshold**

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Revenue or capital costs of culture and heritage conservation (Art 53)	€150m capital €75m revenue	Per project Per undertaking per year

## 10 **AID SCHEMES FOR AUDIO-VISUAL WORKS – ARTICLE 54**

### 10.1 **Eligible activities**

Aid schemes to support the script-writing, development, production, distribution and promotion of audio-visual works

### 10.2 Aid may take the form of:

10.2.1 aid to the production of audio-visual works;

10.2.2 pre-production aid; and

10.2.3 distribution aid.

Where it is decided to make the aid subject to territorial spending obligations, aid schemes for the production of audio-visual works may either:

10.2.4 require that up to 160% of the aid granted to the production of a given audio visual work is spent in the territory of the Member State granting the aid; or

10.2.5 calculate the aid granted to the production of a given audio-visual work as a percentage of the expenditure on production activities in the granting Member State, typically in case of aid schemes in the form of tax incentives.

For projects to be eligible for aid, that level shall not exceed 80% of the overall production budget.

For projects to be eligible for aid we may also require as a condition that a minimum level of production activity takes place within the SOSE area, but that level shall not exceed 50% of the overall production budget.

### 10.3 **Geographic eligibility**

All of SOSE area

### 10.4 **Sector eligibility**

Ineligible sectors are:

10.4.1 fishing, fish processing and aquaculture;

10.4.2 primary production of agricultural products, including the growing of trees;

10.4.3 aid for the processing and marketing of agricultural products may be given except:

- (a) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or
- (b) when the aid is conditional on being partly or entirely passed on to primary producers.

10.5 **Aid limits**

The aid intensity in terms of grant or grant equivalence for the production of audio-visual works shall not exceed the following:

Activity	Aid as % of total eligible costs	Comment
Production	50%	
Distribution	50%	
As above when funded by more than one state member	60%	Cross-border productions
“Difficult” works and co-productions involving countries from the OECD’s Development Assistance Committee	100%	Aid must not be skewed so that production receives more than 100% eligible costs

“**Difficult audio visual works**” means the works identified as such by Member States on the basis of pre-defined criteria when setting up schemes or granting the aid and may include films whose sole original version is in a language of a Member State with a limited territory, population or language area, short films, films by first-time and second-time directors, documentaries, or low budget or otherwise commercially difficult works.

Development Assistance Committee (“**DAC**”) List of the OECD means all countries and territories that are eligible to receive official development assistance and included in the list compiled by the Organisation for Economic Cooperation and Development (OECD).

The aid intensity for pre-production shall not exceed 100% of the eligible costs. If the resulting script or project is made into an audio-visual work such as a film, the pre-production costs shall be incorporated in the overall budget and taken into account when calculating the aid intensity. The aid intensity for distribution shall be the same as the aid intensity for production.

10.6 **Eligible costs**

The eligible costs shall be the following:

10.6.1 production aid: the overall costs of production of audio-visual works including costs to improve accessibility for persons with disabilities;

10.6.2 for pre-production aid: the costs of script-writing and the development of audio-visual works;

10.6.3 for distribution aid: the costs of distribution and promotion of audio-visual works.

## 10.7 **Types of assistance**

Grant or loan.

## 10.8 **Conditions attaching to the State aid**

Aid shall not be reserved for specific production activities or individual parts of the production value chain. Aid for film studio infrastructures shall not be eligible under this Article.

Aid shall not be reserved exclusively for nationals and beneficiaries shall not be required to have the status of undertaking established under national commercial law.

Conditions may be imposed that require a proportion of the expenditure on production activities to be made in Southern Scotland or in the UK. Details as outlined in the Eligible activities section.

## 10.9 **Notification threshold**

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Aid schemes for production and distribution of cultural audio-visual works (Art 54)	€50m	Per scheme per year

## 11 **AID FOR SPORT AND MULTIFUNCTIONAL RECREATIONAL INFRASTRUCTURE – ARTICLE 55**

### 11.1 **Eligible activities and special conditions**

Aid for sport and multifunctional recreational infrastructures may take the form of:

11.1.1 investment aid, including aid for the construction or upgrade of sport and multifunctional recreational infrastructure;

### 11.1.2 operating aid for sport infrastructure.

Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20% of time. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.

Professional sport means the practice of sport in the nature of gainful employment or remunerated service, irrespective of whether or not a formal labour contract has been established between the professional sports person and the relevant sport organisation, where the compensation exceeds the cost of participation and constitutes a significant part of the income for the sports person. Travel and accommodation expenses to participate to the sport event shall not be considered as compensation.

Multifunctional recreational infrastructure shall consist of recreational facilities with a multifunctional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.

Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30% of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.

If sport infrastructure is used by professional sport clubs, Member States shall ensure that the pricing conditions for its use are made publicly available.

Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

## 11.2 **Geographic eligibility**

All of the SOSE area

## 11.3 **Sector eligibility**

Ineligible sectors are:

11.3.1 fishing, fish processing and aquaculture;

11.3.2 primary production of agricultural products, including the growing of trees;

11.3.3 aid for the processing and marketing of agricultural products may be given except:

- (a) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or
- (b) when the aid is conditional on being partly or entirely passed on to primary producers.

**11.4 Aid limits**

For investment aid for sport and multifunctional recreational infrastructure, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

For operating aid for sport infrastructure, the aid amount shall not exceed the operating losses over the relevant period. This shall be ensured ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

For aid not exceeding €2 million, the maximum amount of aid may be set at 80% of eligible costs as an alternative to applying the method above.

**11.5 Eligible costs**

For investment aid for sport and multifunctional recreational infrastructure the eligible costs shall be the investment costs in tangible and intangible assets.

For operating aid for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid.

**11.6 Types of assistance**

Grant or loan.

**11.7 Notification threshold**

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Construction and operation of sport and multi-purpose	€30m of aid or total costs exceeding €100m	Per project

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
recreational infrastructures (Art 55)	Operating aid €2m	Per infrastructure per year

## 11.8 Aid for local infrastructures (except airports and ports) – Article 56

### 11.8.1 Eligible activities and special conditions

Financing for the construction or upgrade of local infrastructures which concerns infrastructure that contribute at a local level to improving the business and consumer environment and modernising and developing the industrial base, no further official definition is available, except that the following infrastructures, that may be subsidised by other articles of the GBER, may not be assisted via this article ie:

- (a) alternative trading platforms specialising in investment in SMEs (Article 23);
- (b) research infrastructures (Article 21);
- (c) district heating (Article 46);
- (d) energy infrastructure (Article 48);
- (e) broadband (Article 52);
- (f) sport and recreational infrastructures (Article 55).

The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall correspond to market price.

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

### 11.8.2 Geographic eligibility

All of SOSE area.

### 11.8.3 Eligible sectors

This Article may not be used for airport or maritime port infrastructure (covered by Articles 56a and 56b). The article may be used for shipyards which are below the thresholds for shipbuilding and ship repair (see Part 1 of the Schedule for definition).

Dedicated infrastructure may not be assisted under this Article, but may be assisted under Regional aid (Art 14) or SME aid (Art 17). Dedicated Infrastructure means facilities that are built for undertakings that have been identified prior to construction and that have been tailored to their needs.

### 11.8.4 Aid limits

The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

### 11.8.5 Eligible costs

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

### 11.8.6 Types of assistance

Grant or loan.

### 11.8.7 Notification threshold

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
Investment in local infrastructures (Art 56)	€10m of aid or €20m of total costs – if either is exceeded, project requires prior EC approval	Per infrastructure

## 11.9 Aid for regional airports – Article 56a

### 11.9.1 Eligible activity

Aid can take the form of investment aid or operating aid.

Investment aid is available to airports with:

- (a) less than an average of 200,000 tonnes annual freight traffic during the two financial years preceding the year in which aid is actually granted and where the aid is not expected to raise the average annual freight traffic above 200,000 tonnes within the two financial years following the granting of the aid; and
- (b) up to 200,000 average annual passengers during the two financial years preceding the year in which aid is actually granted if the aid is not expected to raise the average annual passenger numbers above 200,000 within the two financial years following the granting of the aid; or
- (c) up to 3 million annual average passengers during the two financial years preceding the year in which aid is actually granted provided –
  - (i) the airport is located more than 100kms or 60 minutes travel time by car, bus, or rail from an existing airport with scheduled air services; and
  - (ii) the aid is not expected to raise the average annual passenger numbers above 3 million within the two financial years following the granting of the aid; and
  - (iii) the investment concerned shall not exceed what is necessary to accommodate the medium term growth in traffic based on reasonable traffic forecasts.

Operating aid is available to airports with up to 200,000 average annual passengers during the two financial years preceding the year in which aid is actually granted.

#### 11.9.2 **Special conditions**

The airport shall be open to all potential users. In the case of physical limitation of capacity, the allocation shall take place on the basis of pertinent, objective, transparent and non-discriminatory criteria.

Granting of operating aid shall not be made conditional on making arrangements with specific airlines relating to airport charges, marketing payments or other financial aspects of the airline's operations at the airport concerned.

#### 11.9.3 **Ineligible activity**

- (a) Aid to an airport that exceeds the size limits specified in the eligible activity section above.

- (b) Aid to assist the relocation of an existing airport or to create a new passenger airport, including the conversion of an existing airfield into a passenger airport.
- (c) Operating aid shall not be paid out in any calendar year during which annual passenger numbers for the airport exceed 200,000.

#### 11.9.4 **Eligible costs**

Costs for investment in airport infrastructure, including planning costs are eligible. Airport infrastructure is defined as infrastructure and equipment for the provision of services by the airport to airlines and various service operators including:

- (a) runways;
- (b) terminals;
- (c) aprons;
- (d) taxiways;
- (e) centralised ground handling infrastructure;
- (f) any other facilities that directly support the airport services.

#### 11.9.5 **Ineligible costs**

- (a) Infrastructure and equipment primarily necessary for pursuing non-aeronautical activities
- (b) Costs related to commercial infrastructure such as shops are not included.

#### 11.9.6 **Types of assistance**

Grant or loan

#### 11.9.7 **Aid limits**

For investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. "Operating profit" is defined as the difference between the discounted revenues and discounted operating costs over the economic life of the investment where this difference is positive. Applying an appropriate discount rate allows a reasonable profit to be made (see Part 1 of the Schedule for definition). The operating profit shall be deducted from the eligible costs ex-ante, on the basis of reasonable projections, or through a claw-back mechanism.

For operating aid, the amount of aid shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. The aid shall be paid in the form of periodic instalments fixed ex ante, which shall not be increased during the period for which aid is granted. Alternatively, the aid amount can be defined ex post based on observed operating losses once actual results are demonstrated through independently verified management accounts or audited accounts.

The aid intensity in terms of grant or grant equivalence for aid to regional airports shall not exceed the following:

<b>Airport size (based on average annual passenger traffic in the two financial years preceding the year the grant is paid out)</b>	<b>Comment</b>	<b>Aid as % of total eligible costs</b>
Up to one million One Million to three million	For airports located in remote regions	95% 75%
Up to one million One Million to three million		75% 50%
Up to 200,000	Operating Aid	Not exceeding aid needed to cover operating losses and a reasonable profit over the relevant period

#### 11.9.8 Notification Threshold

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Aid for regional airports (Art 56a)	No set cash amount. Notification required only if we wish to exceed the maximum aid limit using the calculation method described in the Aids Limits Section.	The Commission considers the size of the airport has more of a competitive impact than the amount of aid.

## 11.10 Aid for maritime ports – Article 56b

### 11.10.1 Eligible activities

Capital investment in the construction, replacement or upgrade of port infrastructure. A port is defined as “an area of land and water made up of such infrastructure and equipment necessary to permit the reception of waterborne vessels, their loading and unloading, the receipt, storage and delivery of goods, the embarkation and disembarkation of passengers and crew and the infrastructure necessary for transport operators within the port”. This means ports and harbours engaged in commercial and industrial activities where the port authority or harbour trust will gain an economic advantage from the development.

### 11.10.2 Special conditions

The aided infrastructure shall be made available to all interested users on an equal and non-discriminatory basis on market terms.

Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.

The EU definitions for terms used in this Article can be found in Part 1 of the Schedule for definition.

### 11.10.3 Geographic eligibility

All of the SOSE area.

### 11.10.4 Eligible costs

The eligible costs shall be the costs, including planning costs of:

- (a) construction, replacement or upgrade of port infrastructure ie:
  - (i) facilities for transport related port services e.g. berthing or mooring of ships, quay walls, jetties or floating pontoon ramps in tidal areas;
  - (ii) internal basins, backfills and land reclamation;
  - (iii) alternative fuel infrastructure (to supply vessels with electricity, hydrogen or biofuels – see Part 1 of the Schedule for definitions);

- (iv) facilities for collecting ship-generated waste or cargo residues;
- (b) construction, replacement or upgrade of access infrastructure ie. roads, railway tracks, channels and locks; and
- (c) dredging:
  - (i) removal of sediments from the bottom of the waterway access to, or within, a port;
  - (ii) new channels or maintenance dredging are eligible subject to the limits below. A dredging project is defined as all dredging carried out within a one calendar year period.

#### 11.10.5 **Ineligible costs**

Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops. Industrial facilities may be considered under Article 56 – Local infrastructure provided they are not bespoke and will be made openly available at market rates.

Port superstructures defined as surface arrangements.

#### 11.10.6 **Aid limits**

The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment or dredging. The operating profit shall be deducted from the eligible costs ex-ante, on the basis of reasonable projections, or through a claw-back mechanism.

The aid intensity per investment for port infrastructure, point a) above, shall not exceed:

- (a) 100% of the eligible costs where the total eligible project costs are up to €20M;
- (b) 85%\* of the eligible costs where the total eligible project costs are above €20M and up to €50M;
- (c) 65%\* of the eligible costs where the total eligible project costs are above €50M and up to €130M (€150M if the port is included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) 1315/2013 on Union guidelines for the development of the trans-European transport network).

\*includes a 5 percentage point increase for Article 107(3)(c) assisted areas.

The aid intensity per investment for access infrastructure and dredging, points b) and c) above, shall not exceed 100% of the eligible project costs up to €130M (€150M if the port is included in the workplan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) 1315/2013 on Union guidelines for the development of the trans-European transport network.)

For aid not exceeding €5M, the maximum amount of aid may be set at 80% of eligible project costs as an alternative to applying the methods above.

**11.10.7 Types of assistance**

Grant or loan.

**11.10.8 Notification Threshold**

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
Aid for maritime ports (Art 56b)	€130M of eligible costs per project (€150M if the port is included in the workplan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) 1315/2013 on Union guidelines for the development of the trans- European transport network.) If either is exceeded, project requires prior EC approval.	Per project  For dredging, a project is defined as all dredging carried out within one calendar year

## SCHEDULE

### PART 1 – DEFINITIONS OF TERMS THAT APPLY TO THE GBER REGULATIONS

The GBER does not provide a definition for an “undertaking” but the term is used throughout the Regulation and it was felt that it would be useful to include a definition here. The undernoted is taken from the European Commission’s Notice on the “Notion of Aid” 19-07-2016

An “**undertaking**” is an entity engaged in economic activity regardless of its legal status and the way in which it is financed. The classification of a particular entity depends entirely on the nature of its activities and the general principle has three important consequences.

- 1 The legal structure and status is not the deciding factor; third sector and public bodies can carry out economic activity and be deemed undertakings within the meaning of Article 107(1) of the Treaty.
- 2 The application of the State aid rules does not depend on whether the entity is set up to generate profits. Non-profit distributing entities who offer goods and services on a market become undertakings and are within the scope of State aid control.
- 3 The classification as an undertaking always relates to a specific activity thus if an entity carries out both economic and non-economic activities it is only the economic activities that are regarded as the undertaking.

An undertaking can also be one or more legal entity which forms one economic unit; typically this might involve two or more companies in a group of companies, partnership or a joint venture where each company carries out part of the economic activity. If the companies concerned in the economic activity are acting together and share the risks and rewards they form part of the undertaking. However, if they are operating through a supply agreement or service contract which has been competitively tendered the supplier is not considered part of the undertaking.

If you have a case where you are unsure how to determine what is within the scope of the undertaking please discuss it with the BIIA team.

The following definitions are referenced from Article 2 of the GBER (EU) 651/2014 and the Amending Regulation 2017/1084:

“**aid**” means any measure fulfilling all the criteria laid down in Article 107(1) of the Treaty;

“**small and medium-sized enterprises**” or “**SMEs**” means undertakings fulfilling the criteria laid down in Part 4 of the Schedule;

“**worker with disabilities**” means any person who:

- (a) is recognised as worker with disabilities under national law; or

- (b) has long-term physical, mental, intellectual or sensory impairment(s) which, in interaction with various barriers, may hinder their full and effective participation in a work environment on an equal basis with other workers;

**“disadvantaged worker”** means any person who:

- (a) has not been in regular paid employment for the previous 6 months; or
- (b) is between 15 and 24 years of age; or
- (c) has not attained an upper secondary educational or vocational qualification (International Standard Classification of Education 3) or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment; or
- (d) is over the age of 50 years; or
- (e) lives as a single adult with one or more dependents; or
- (f) works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
- (g) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;

**“transport”** means transport of passengers by aircraft, maritime transport, road, rail, or by inland waterway or freight transport services for hire or reward; 26.6.2014 EN Official Journal of the European Union L 187/17;

**“transport costs”** means the costs of transport for hire or reward actually paid by the beneficiaries per journey, comprising:

- (a) freight charges, handling costs and temporary stocking costs, in so far as these costs relate to the journey;
- (b) insurance costs applied to the cargo;
- (c) taxes, duties or levies applied to the cargo and, if applicable, to the deadweight, both at point of origin and point of destination; and
- (d) safety and security control costs, surcharges for increased fuel costs;

**“remote regions”** means outermost regions, Malta, Cyprus, Ceuta and Melilla, islands which are part of the territory of a Member State and sparsely populated areas;

**“marketing of agricultural products”** means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose;

**“primary agricultural production”** means production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products;

**“processing of agricultural products”** means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;

**“agricultural product”** means the products listed in Annex I to the Treaty, except fishery and aquaculture products listed in the Regulation of Common Organisation of Markets in Fishery and Aquaculture products (CMO) Annexe 1<sup>12</sup>;

**“outermost regions”** means regions as defined in Article 349 of the Treaty. In accordance with European Council Decision 2010/718/EU, from 1 January 2012, Saint-Barthélemy ceased to be an outermost region. In accordance with European Council Decision 2012/419/EU on 1 January 2014, Mayotte became an outermost region;

**“coal”** means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal established by the United Nations Economic Commission for Europe and clarified in the Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;

**“individual aid”** means:

- (a) ad hoc aid; and
- (b) awards of aid to individual beneficiaries on the basis of an aid scheme;

**“aid scheme”** means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount;

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<sup>12</sup> Regulation (EU) 1379/2013 of the European Parliament and of the Council of 11 December 2013

**“evaluation plan”** means a document containing at least the following minimum elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation;

**“ad hoc aid”** means aid not granted on the basis of an aid scheme;

**“undertaking in difficulty”** means an undertaking (see defined above) in respect of which at least one of the following circumstances occurs:

- (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 within 7 years from its first commercial sale that 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” is a public company limited by shares or guarantee or private companies limited by shares or guarantee;<sup>13</sup>
- (b) in the case of a company where at least some 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 within 7 years from its first commercial sale that 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 members have unlimited liability for the debt of the company” refers in particular to partnerships, limited partnerships, unlimited companies;<sup>14</sup>
- (c) where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors;
- (d) where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan;

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<sup>13</sup> As defined in Annex 1 of the EU Directive 2013/34

<sup>14</sup> As defined in Annex 2 of the EU Directive 2013/34

- (a) in the case of large firms (undertakings that are not SMEs), where, for the past two years:
- (i) the undertaking's book debt to equity ratio has been greater than 7.5; and
  - (ii) the undertaking's EBITDA value is less than the cost of interest;

**“territorial spending obligations”** mean the obligations imposed by the authority granting the aid on beneficiaries to spend a minimum amount and/or conduct a minimum level of production activity in a particular territory;

**“adjusted aid amount”** means the maximum permissible aid amount for a large investment project, calculated according to the following formula:

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

where: R is the maximum aid intensity applicable in the area concerned established in an approved regional map and which is in force on the date of granting the aid, excluding the increased aid intensity for SMEs; A is the initial EUR 50 million of eligible costs, B is the part of eligible costs between EUR 50 million and EUR 100 million and C is the part of eligible costs above EUR 100 million;

**“repayable advance”** means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project;

**“gross grant equivalent”** means the amount of the aid if it had been provided in the form of a grant to the beneficiary, before any deduction of tax or other charge;

**“start of works”** means the earlier of 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. An investment is considered irreversible if the financial penalty of cancellation would make it financially better for the applicant to continue with the project without State aid then cancel the commitment;

Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works except in the case where buying land and preparatory works prior to the start of construction or legally binding commitment exceeds the private sector commitment to the project. Where these preliminary costs exceed the private sector contribution it is necessary for an application to have been submitted in order to comply with the incentive effect (see general eligibility criteria for GBE). For take-overs, “start of works” means the moment of acquiring the assets directly linked to the acquired establishment.

**“large enterprises”** means undertakings not fulfilling the criteria for an SME (laid down in Annex I to the GBER);

**“fiscal successor scheme”** means a scheme in the form of tax advantages which constitutes an amended version of a previously existing scheme in the form of tax advantages and which replaces it;

**“aid intensity”** means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;

**“assisted areas”** means areas designated in an approved regional aid map for the period 1 July 2014 – 31 December 2020 in application of Articles 107(3)(a) and (c) of the Treaty;

**“date of granting of the aid”** means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime;

**“tangible assets”** means assets consisting of land, buildings and plant, machinery and equipment;

**“intangible assets”** means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property;

**“wage cost”** means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising over a defined period of time the gross wage before tax and compulsory contributions such as social security, child care and parent care costs;

**“net increase in the number of employees”** means a net increase in the number of employees in the establishment concerned compared with the average over a given period in time, and that any posts lost during that period must therefore be deducted and that the number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions;

**“dedicated infrastructure”** means infrastructure that is built for ex-ante identifiable undertaking(s) and tailored to their needs;

**“financial intermediary”** means any financial institution regardless of its form and ownership, including fund-of funds, private equity investment funds, public investment funds, banks, micro-finance institutions and guarantee societies;

**“journey”** means the movement of goods from the point of origin to the point of destination, including any intermediary sections or stages within or outside the Member State concerned, made using one or more means of transport;

**“fair rate of return” (“FRR”)** means the expected rate of return equivalent to a risk-adjusted discount rate which reflects the level of risk of a project and the nature and level of capital the private investors plan to invest;

**“total financing”** means the overall investment amount made into an eligible undertaking or project under Section 3 or under Articles 16 or 39 of this Regulation to the exclusion of entirely private investments provided on market terms and outside the scope of the relevant State aid measure;

**“competitive bidding process”** means a non-discriminatory bidding process that provides for the participation of a sufficient number of undertakings and where the aid is granted on the basis of either the initial bid submitted by the bidder or a clearing price. In addition, the budget or volume related to the bidding process is a binding constraint leading to a situation where not all bidders can receive aid;

**“operating profit”** means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.

#### **Definitions applying to regional aid**

Definitions applying to aid for broadband infrastructures (Section 10) are applicable to the relevant regional aid provisions.

**“regional investment aid”** means regional aid granted for an initial investment or an initial investment in favour of a new economic activity;

**“regional operating aid”** means aid to reduce an undertaking's current expenditure. This includes cost categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when granting investment aid;

**“steel sector”** means all activities related to the production of one or more of the following products:

- (a) pig iron and ferro-alloys: pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high- carbon ferro-manganese, not including other ferro-alloys;
- (b) crude and semi-finished products of iron, ordinary steel or special steel: liquid steel whether 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;

**“synthetic fibres sector”** means:

- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used;

**“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 NACE Rev. 2:<sup>15</sup>

- (a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.32 Taxi operation, 49.42 Removal services, 49.5 Transport via pipeline;
- (b) NACE 50: Water transport; including cruise boats and tourism excursion boats
- (c) NACE 51: Air transport, excluding NACE 51.22 Space transport;

**“scheme targeted at a limited number of specific sectors of economic activity”** means a scheme which covers activities falling within the scope of less than five classes (four-digit numerical code) of the NACE Rev. 2 statistical classification;

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<sup>15</sup> NACE is the EU equivalent of UK SIC codes – HMS is to be adapted to show NACE codes only.

**“tourism activity”** means the following activities in terms of NACE Rev. 2:

- (a) NACE 55:Accommodation;
- (b) NACE 56: Food and beverage service activities;
- (c) NACE 79: Travel agency, tour operator reservation service and related activities;
- (d) NACE 90: Creative, arts and entertainment activities;
- (e) NACE 91: Libraries, archives, museums and other cultural activities;
- (f) NACE 93: Sports activities and amusement and recreation activities;

**“sparsely populated areas”** means NUTS 2 regions with less than 8 inhabitants per km<sup>2</sup> or NUTS 3 regions with less than 12.5 inhabitants per km<sup>2</sup> or areas which are recognized by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;

**“very sparsely populated areas”** means NUTS 2 regions with less than 8 inhabitants per km<sup>2</sup> or areas which are recognized by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;

**“initial investment”** means:

- (a) an investment in tangible and intangible assets related to the setting-up of a new establishment, extension of the capacity of an existing establishment, diversification of the output of an establishment into products not previously produced in the establishment or a fundamental change in the overall production process of an existing establishment; or
- (b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking;

Note that “establishment” in the context of initial investment is understood as a production unit and not a legal entity.

**“same or a similar activity”** means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains;

**“new economic activity”** in the context of initial investment means:

- (a) an investment in tangible and intangible assets related to the setting up of a new establishment, or to the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment;
- (b) the acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not the same or a similar activity to the activity performed in the establishment prior to the acquisition;

Note that “establishment” in the context of initial investment is understood as a production unit and not a legal entity.

**“large investment project”** means an initial investment with eligible costs exceeding EUR 50 million, calculated at prices and exchange rates on the date of granting the aid;

**“point of destination”** means the place where the goods are unloaded;

**“point of origin”** means the place where the goods are loaded for transport;

**“areas eligible for operating aid”** means an outermost region referred to in Article 349 of the Treaty, a sparsely populated area or a very sparsely populated area;

**“means of transport”** means rail transport, road freight transport, inland waterway transport, maritime transport, air transport, and intermodal transport;

**“urban development fund” (“UDF”)** means a specialised investment vehicle set up for the purpose of investing in urban development projects under an urban development aid measure. UDFs are managed by an urban development fund manager;

**“urban development fund manager”** means a professional management company with legal personality, selecting and making investments in eligible urban development projects;

**“urban development project” (“UDP”)** means an investment project that has the potential to support the implementation of interventions envisaged by an integrated approach to sustainable urban development and contribute to achieving of the objectives defined therein, including projects with an internal rate of return which may not be sufficient to attract financing on a purely commercial basis. An urban development project may be organised as a separate block of finance within the legal structures of the beneficiary private investor or as a separate legal entity, e.g. a special purpose vehicle;

**“integrated sustainable urban development strategy”** means a strategy officially proposed and certified by a relevant local authority or public sector agency, defined for a specific urban geographic area and period, that set out integrated actions to tackle the economic, environmental, climate, demographic and social challenges affecting urban areas;

**“in-kind contribution”** means the contribution of land or real estate where the land or real estate forms part of the urban development project;

a **“relocation”** means a transfer of the same or 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 or service 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 beneficiary in the EEA;

#### **Definitions for Aid to SMEs**

**“employment directly created by an investment project”** means employment concerning the activity to which the investment relates, including employment created following an increase in the utilisation rate of the capacity created by the investment;

**“organisational cooperation”** means the development of joint business strategies or management structures, the provision of common services or services to facilitate cooperation, coordinated activities such as research or marketing, the support of networks and clusters, the improvement of accessibility and communication, the use of joint instruments to encourage entrepreneurship and trade with SMEs;

**“advisory services linked to cooperation”** means consulting, assistance and training for the exchange of knowledge and experiences and for improvement of cooperation;

**“support services linked to cooperation”** means the provision of office space, websites, data banks, libraries, market research, handbooks, working and model documents.

#### **Definitions for Aid for access to finance for SMEs**

**“quasi-equity investment”** means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default. Quasi-equity investments can be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity;

**“guarantee”** in the context of sections 1, 3 and 7 of the Regulation means a written commitment to assume responsibility for all or part of a third party's newly originated loan transactions such as debt or lease instruments, as well as quasi-equity instruments;

**“guarantee rate”** means the percentage of loss coverage by a public investor of each and every transaction eligible under the relevant State aid measure;

**“exit”** means the liquidation of holdings by a financial intermediary or investor, including trade sale, write-offs, repayment of shares/loans, sale to another financial intermediary or another investor, sale to a financial institution and sale by public offering, including an initial public offering (**“IPO”**);

**“financial endowment”** means a repayable public investment made to a financial intermediary for the purposes of making investments under a risk finance measure, and where all the proceeds shall be returned to the public investor;

**“risk finance investment”** means equity and quasi-equity investments, loans including leases, guarantees, or a mix thereof to eligible undertakings for the purposes of making new investments;

**“independent private investor”** means a private investor who is not a shareholder of the eligible undertaking in which it invests, including business angels and financial institutions, irrespective of their ownership, to the extent that they bear the full risk in respect of their investment. Upon the creation of a new company, private investors, including the founders, are considered to be independent from that company;

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

**“equity investment”** means the provision of capital to an undertaking, invested directly or indirectly in return for the ownership of a corresponding share of that undertaking;

**“first commercial sale”** means the first sale by a company on a product or service market, excluding limited sales to test the market;

**“unlisted SME”** means an SME which is not listed on the official list of a stock exchange, except for alternative trading platforms;

**“follow-on investment”** means additional risk finance investment in a company subsequent to one or more previous risk finance investment rounds;

**“replacement capital”** means the purchase of existing shares in a company from an earlier investor or shareholder;

**“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 financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority, a public law body, or a private law body with a public

service mission: the entrusted entity can be selected or directly appointed in accordance with the provisions of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, or any subsequent legislation replacing that Directive in full or in part;

**“innovative enterprise”** means an enterprise:

- (a) that can demonstrate, by means of an evaluation carried out by an external expert that it will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure, or
- (b) the research and development costs of which 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;

**“alternative trading platform”** means a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC where the majority of the financial instruments admitted to trading are issued by SMEs;

**“loan”** means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period. It may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield. The refinancing of existing loans shall not be an eligible loan.

#### **Definitions for Aid for research and development and innovation**

**“research and knowledge-dissemination organisation”** means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity also pursues economic activities the financing, the costs and the revenues of those economic activities must be accounted for separately. Undertakings that can exert a decisive influence upon such an entity, in the quality of, for example, shareholders or members, may not enjoy preferential access to the results generated by it;

**“fundamental research”** means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view;

**“industrial research”** means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts 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;

**“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. This may also include, 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;

**“feasibility study”** means the evaluation and analysis of the potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success;

**“personnel costs”** means the costs of researchers, technicians and other supporting staff to the extent employed on the relevant project or activity;

**“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 enterprises 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;

**“effective collaboration”** means collaboration between at least two independent parties to exchange knowledge or technology, or to achieve a common objective based on the division of labour where the parties jointly define the scope of the collaborative project, contribute to its implementation and share its risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of its financial risks. Contract research and provision of research services are not considered forms of collaboration;

**“research infrastructure”** means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers scientific equipment or sets of instruments, knowledge-based resources such as collections, archives

or structured scientific information, enabling information and communication technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research. Such infrastructures may be “single-sited” or “distributed” (an organised network of resources) in accordance with Article 2(a) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC);

**“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, non-profit organisations and other related economic actors) designed to stimulate innovative activity through promotion, 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;

**“highly qualified personnel”** means staff having a tertiary education degree and at least five years of relevant professional experience which may also include doctoral training;

**“innovation advisory services”** means consultancy, assistance and training in the fields of knowledge transfer, acquisition, protection and exploitation of intangible assets, use of standards and regulations embedding them;

**“innovation support services”** means the provision of office space, data banks, libraries, market research, laboratories, quality labelling, testing and certification for the purpose of developing more effective products, processes or services;

**“organisational innovation”** means the implementation of a new organisational method in an undertaking's business practices, workplace organisation or external relations, excluding 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;

**“process innovation”** means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment or software), excluding 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;

**“secondment”** means temporary employment of staff by a beneficiary with the right for the staff to return to the previous employer;

## **Definitions for aid for disadvantaged workers and for workers with disabilities**

**“severely disadvantaged worker”** means any person who:

- (a) has not been in regular paid employment for at least 24 months; or
- (b) has not been in regular paid employment for at least 12 months and belongs to one of the categories (b) to (g) mentioned under the definition of “disadvantaged worker”;

**“sheltered employment”** means employment in an undertaking where at least 30 % of workers are workers with disabilities;

## **Definitions applying to aid for environmental protection**

**“environmental protection”** means any action designed to remedy or prevent damage to physical surroundings or natural resources by a beneficiary's own activities, to reduce risk of such damage or to lead to a more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy;

**“Union standard”** means:

- (a) a mandatory EU standard setting the levels to be attained in environmental terms by individual undertakings; or
- (b) the obligation under Directive 2010/75/EU of the European Parliament and of the Council (1) to use the best available techniques (BAT) and ensure that emission levels of pollutants are not higher than they would be when applying BAT; for the cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those levels will be applicable for the purpose of this Regulation; where those levels are expressed as a range, the limit where the BAT is first achieved will be applicable;

**“energy efficiency”** means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy-efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption;

**“energy efficiency project”** means an investment project that increases the energy efficiency of a building;

**“energy efficiency fund” (“EEF”)** means a specialised investment vehicle set up for the purpose of investing in energy efficiency projects aimed at improving the energy efficiency of buildings in both the domestic and non-domestic sectors. EEFs are managed by an energy efficiency fund manager;

**“energy efficiency fund manager”** means a professional management company with a legal personality, selecting and making investments in eligible energy efficiency projects;

**“high-efficiency cogeneration”** means cogeneration which satisfies the definition of high efficiency cogeneration as set out in Article 2(34) of 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 (1);

**“cogeneration”** or combined heat and power (**“CHP”**) means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;

**“energy from renewable energy sources”** means energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources. It includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems;

**“renewable energy sources”** means the following renewable non-fossil energy sources: wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

**“biofuel”** means liquid or gaseous fuel for transport produced from biomass;

**“sustainable biofuel”** means a biofuel fulfilling the sustainability criteria set out in Article 17 of Directive 2009/28/EC;

**“food based biofuel”** means a biofuel produced from cereal and other starch rich crops, sugars and oil crops as defined in the Commission's Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources;

**“new and innovative technology”** means a new and unproven 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;

**“balancing responsibilities”** means responsibility for imbalances (deviations between generation, consumption and commercial transactions) of a market participant or its chosen representative, referred to as the “Balance Responsible Party”, within a given period of time, referred to as the “Imbalance Settlement Period”;

**“standard balancing responsibilities”** means non-discriminatory balancing responsibilities across technologies which do not exempt any generator from those responsibilities;

**“biomass”** means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as biogases and the biodegradable fraction of industrial and municipal waste;

**“total levelized costs of producing energy”** is a calculation of the cost of generating electricity at the point of connection to a load or electricity grid. It includes the initial capital, discount rate, as well as the costs of continuous operation, fuel, and maintenance;

**“environmental tax”** means a tax with a specific tax base that has a clear negative effect on the environment or which seeks to tax certain activities, goods or services so that the environmental costs may be included in their price and/or so that producers and consumers are oriented towards activities which better respect the environment;

**“Union minimum tax level”** means the minimum level of taxation provided for in the EU legislation; for energy products and electricity it means the minimum level of taxation laid down in Annex I to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity;

**“contaminated site”** means a site where there is a confirmed presence, caused by man, of hazardous substances of such a level that they pose a significant risk to human health or the environment taking into account current and approved future use of the land;

**“polluter pays principle”** or **“PPP”** means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution;

**“pollution”** means the damage caused by a polluter directly or indirectly damaging the environment, or by creating conditions leading to such damage to physical surroundings or natural resources;

**“energy efficient district heating and cooling”** means a district heating and cooling system which satisfies the definition of efficient district heating and cooling system set out in Article 2(41) and (42) of Directive 2012/27/EU. The definition includes the heating/cooling production plants and the network (including related facilities) necessary to distribute the heat/cooling from the production units to the customer premises;

**“polluter”** means someone who directly or indirectly damages the environment or who creates conditions leading to such damage;

**“re-use”** means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;

**“preparing for re-use”** means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;

**“recycling”** means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;

**“state of the art”** means a process in which the re-use of a waste product to manufacture an end product is economically profitable normal practice. Where appropriate, the concept of state of the art must be interpreted from a Union technological and internal market perspective;

**“energy infrastructure”** means any physical equipment or facility which is located within the EU or linking the EU to one or more third countries and falling under the following categories:

- (a) concerning electricity:
  - (i) infrastructure for transmission, as defined in Article 2(3) by Directive 2009/72/EC of 13 July 2009 concerning common rules for internal market in electricity;
  - (ii) infrastructure for distribution, as defined in Article 2(5) by Directive 2009/72/EC;
  - (iii) electricity storage, defined as facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;
  - (iv) any equipment or installation essential for the systems defined in points (i) to (iii) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations; and
  - (v) smart grids, defined as any equipment, line, cable or installation, both at transmission and low and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;
- (b) concerning gas:
  - (i) transmission and distribution pipelines for the transport of natural gas and bio 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 mentioned in point (i);
  - (iii) reception, storage and regasification or decompression facilities for liquefied natural gas (“LNG”) or compressed natural gas (“CNG”); and
  - (iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;
- (c) concerning oil:
- (i) pipelines used to transport crude oil;
  - (ii) pumping stations and storage facilities necessary for the operation of crude oil pipelines; and
  - (iii) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;
- (d) concerning CO<sub>2</sub>: networks of pipelines, including associated booster stations, for the transport of CO<sub>2</sub> to storage sites, with the aim to inject the CO<sub>2</sub> in suitable underground geological formations for permanent storage;

“**internal energy market legislation**” includes Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, 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 (1), Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (2); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges (3) and 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 or any subsequent legislation replacing these acts in full or in part;

#### **Definitions applying to social aid for transport for residents of remote regions**

“**normal residence**” means the place where a natural person lives for at least 185 days, in each calendar year, because of personal and occupational ties; in the case of a person whose occupational ties are in a different place from his/her personal ties and who lives in two or more Member States, the place of normal residence is regarded as the place of his/her personal ties provided that he/she returns there regularly; where a person is living in a Member State in order to carry out a task of a set duration, the place of residence is still regarded as being the place of his/her personal ties, irrespective of whether he/she returns there during the course of this activity; attendance at a university or school in another Member State does

not constitute a transfer of normal residence; alternatively, “normal residence” shall have the meaning attributed to it in Member States' national law;

### **Definitions for aid for broadband infrastructures**

**“basic broadband”**, **“Basic broadband networks”** means networks with basic functionalities which are based on technology platforms such as asymmetric digital subscriber lines (up to ADSL2+ networks), non-enhanced cable (e.g. DOCSIS 2.0), mobile networks of third generation (UMTS) and satellite systems;

**“broadband-related civil engineering works”** means the civil engineering works which are necessary for the deployment of a broadband network, such as digging up a road in order to enable the placement of (broadband) ducts;

**“ducts”** means underground pipes or conduits used to house (fibre, copper or coax) cables of a broadband network;

**“physical unbundling”** grants access to the end-consumer access line and allows competitors' own transmission systems to directly transmit over it;

**“passive broadband infrastructure”** means a broadband network without any active component. It typically comprises civil engineering infrastructure, ducts and dark fibre and street cabinets;

**“next generation access networks” (“NGA”)** means advanced networks which have at least the following characteristics:

- (a) deliver services reliably at a very high speed per subscriber through optical (or equivalent technology) backhaul sufficiently close to user premises to guarantee the actual delivery of the very high speed;
- (b) support a variety of advanced digital services including converged all-IP services, and
- (c) have substantially higher upload speeds (compared to basic broadband networks). At the current stage of market and technological development, NGA networks are:  
(a) fibre-based access networks (**“FTTx”**), (b) advanced upgraded cable networks and (c) certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber;

**“wholesale access”** means access which enables an operator to utilise the facilities of another operator. The widest possible access to be provided over the relevant network shall include, on the basis of the current technological developments, at least the following access products. For FTTH/FTTB networks: ducts access, access to dark fibre, unbundled access to

the local loop, and bitstream access. For cable networks: duct access and bit-stream access. For FTTC networks: duct access, sub-loop unbundling and bit-stream access. For passive network infrastructure: duct access, access to dark fibre and/or unbundled access to the local loop. For ADSL-based broadband networks: unbundled access to the local loop, bit-stream access. For mobile or wireless networks: bit-stream, sharing of physical masts and access to the backhaul networks. For satellite platforms: bit-stream access;

#### **Definitions for aid for culture and heritage conservation**

**“difficult audio-visual works”** means the works identified as such by Member States on the basis of pre- defined criteria when setting up schemes or granting the aid and may include films whose sole original version is in a language of a Member State with a limited territory, population or language area, short films, films by first-time and second-time directors, documentaries, or low budget or otherwise commercially difficult works;

**Development Assistance Committee (“DAC”)** is a list of the OECD means all countries and territories that are eligible to receive official development assistance and included in the list compiled by the Organisation for Economic Cooperation and Development (**“OECD”**);

**“Reasonable profit”** shall be determined with respect to the typical profit for the sector concerned. In any event, a rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points will be considered to be reasonable;

#### **Definitions for aid for sport and multifunctional recreational infrastructures**

**“professional sport”** means the practice of sport in the nature of gainful employment or remunerated service, irrespective of whether or not a formal labour contract has been established between the professional sportsperson and the relevant sport organisation, where the compensation exceeds the cost of participation and constitutes a significant part of the income for the sportsperson. Travel and accommodation expenses to participate to the sport event shall not be considered as compensation for the purposes of this Regulation;

#### **Definitions for Aid for regional airports**

**“airport infrastructure”** means infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities;

**“airline”** means any airline with a valid operating licence issued by a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council;

**“airport”** means an entity or group of entities performing the economic activity of providing airport services to airlines;

**“airport services”** means services provided to airlines by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure;

**“average annual passenger traffic”** means a figure determined on the basis of the inbound and outbound passenger traffic during the two financial years preceding that in which the aid is granted;

**“centralised ground handling infrastructure”** means infrastructure which is normally operated by the airport manager and put at the disposal of the various providers of ground handling services active at the airport in exchange for remuneration, excluding equipment owned or operated by the providers of ground handling services;

**“high-speed train”** means a train capable of reaching speeds of over 200 km/h;

**“ground handling services”** means services provided to airport users at airports as described in the Annex to Council Directive 96/67/EC;

**“non-aeronautical activities”** means commercial services to airlines or other users of the airport, including ancillary services to passengers, freight forwarders or other service providers, renting out of offices and shops, car parking and hotels;

**“regional airport”** means an airport with average annual passenger traffic of up to 3 million passengers; Definitions for Aid for ports;

**“port”** means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators in the port;

**“maritime port”** means a port for, principally, the reception of sea-going vessels;

**“inland port”** means a port other than a maritime port, for the reception of inland waterway vessels;

**“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, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues;

**“port superstructure”** means surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services;

**“access infrastructure”** means any type of infrastructure necessary to ensure access and entry from land or sea and river by users to a port, or in a port, such as roads, rail tracks, channels and locks;

**“dredging”** means the removal of sediments from the bottom of the waterway access to a port, or in a port;

**“alternative fuel infrastructure”** means a fixed, mobile or offshore port infrastructure allowing a port to supply vessels with energy sources such as electricity, hydrogen, biofuels as defined in point (i) of Article 2 of Directive 2009/28/EC, synthetic and paraffinic fuels, natural gas, including biomethane, in gaseous form (compressed natural gas and liquefied natural gas) and liquefied petroleum gas which serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport and which have the potential to contribute to its decarbonisation and enhance the environmental performance of the transport sector;

**“vessels”** mean floating structures, whether self-propelled or not, with one or more surface displacement hulls;

**“sea-going vessels”** mean vessels other than those which navigate solely or mainly in inland waterways or in waters within, or closely adjacent to, sheltered waters;

**“inland waterway vessels”** mean vessels intended solely or mainly for navigation on inland waterways or in waters within, or closely adjacent to, sheltered waters;

**“infrastructure for the collection of ship-generated waste and cargo residues”** means fixed, floating or mobile port facilities capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council;

The GBER does not provide a new definition of shipbuilding and the guidance from the Commission is to use the Shipbuilding Framework of 2011. As Regional Investment Aid eligibility excludes shipbuilding but does allow aid to activities below the weight limits determined as shipbuilding, the following definition from the Framework for State aid on Shipbuilding 2011 [OJ C364 of 14/12/2011] is set out below.

**“shipbuilding”**:

- (a) **“shipbuilding”** means the building, in the Union, of self-propelled commercial vessels;
- (b) **“ship repair”** means the repair or reconditioning, in the Union, of self-propelled commercial vessels;
- (c) **“ship conversion”** means the conversion, in the Union, of self-propelled commercial vessels of not less than 1,000 Gross Tonnes (**“gt”**), on condition that

conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger accommodation;

- (d) **“self-propelled commercial vessel”** means a vessel that, by means of its permanent propulsion and steering, has all the characteristics of self-navigability on the high seas or on inland waterways and belongs to one of the following categories:
- (i) seagoing vessels of not less than 100 gt and inland waterway vessels of equivalent size used for the transportation of passengers and/or goods;
  - (ii) seagoing vessels of not less than 100 gt and inland waterway vessels of equivalent size used for the performance of a specialised service (for example, dredgers and ice breakers);
  - (iii) tugs of not less than 365 kW;
  - (iv) unfinished shells of the vessels referred to in points (i), (ii) and (iii) that are afloat and mobile; and

**“floating and moving offshore structures”** means structures for the exploration, exploitation or generation of oil, gas or renewable energy that have the characteristics of a commercial vessel except that they are not self-propelled and are intended to be moved several times during their operation.

**PART 2 - TABLE OF NOTIFICATION THRESHOLDS**

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
1 Regional Aid - I&JC (Art 14) where large firms are eligible for < 10%	€7.5m	Per project
2 Regional Aid - I&JC (Art 14) where large firms are eligible for < 15%	€11.25m	Per project
3 SME capital investment (Art 17) - certain sectors and non assisted area	€7.5m	Per project per undertaking involved
4 SME costs of external consultants (Art 18)	€2m	Per project per undertaking involved
5 SME aid to set up & run stand at a Trade Fair (Art 19)	€2m	Per undertaking per year
6 Cooperation costs for SMEs participating in European Territorial Cooperation projects (Art 20)	€2m	Per project per undertaking involved
7 Risk finance investment via financial intermediaries in SMEs (Art 21)	€15m	Per undertaking that is eligible to receive finance from the scheme/fund
8 Start up aid for Newly created Small Enterprises anywhere (Art 22) – grant	€600,000	Grant or grant equivalents if phased grant release, per undertaking
9 Start up aid for Newly created Small Enterprises anywhere (Art 22) - loans	€3,000,000 €2,500,000 €2,142,857 €1,875,000 €1,666,667 €1,500,000	Loan term 1-5 years per firm per undertaking Loan term 6 years Loan term 7 years Loan term 8 years Loan term 9 years Loan term 10 years per undertaking

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
10 Start up aid for Newly created Small Enterprises anywhere (Art 22) - guarantees	€2,250,000 €2,500,000 €2,812,500 €3,214,286 €3,750,000 €4,500,000	Guarantee lasting 10 years Guarantee lasting 9 years Guarantee lasting 8 years Guarantee lasting 7 years Guarantee lasting 6 years Guarantee lasting 5 years
11 Start up aid for young innovative Small enterprises (Art 22)	Double those for "Small enterprise start up aid" above	Per undertaking
12 Screening and due diligence for investors into SMEs (Art 24)	No limit set	
13 R&D – Fundamental Research Project (Art 25)	€40m grant €60 repayable advance	Per project per undertaking in Repayment = advance plus interest at EU discount rate
14 R&D – Industrial Research Project (Art 25)	€20m grant €30m repayable advance	Per project per undertaking Repayment = advance plus interest at EU discount rate
15 R&D Experimental Development Project (art 25)	€15m grant €22.5m repayable advance	Per project per undertaking Repayment = advance plus interest at EU discount rate
16 R&D - Feasibility studies for R&D projects (Art 25)	€7.5m	Per study
17 Investment in Research Infrastructures (Art 26)	€20m	Per infrastructure
18 Investing in and running Innovation Clusters (Art 27)	€7.5m	Per cluster
19 Revenue costs of innovation for SMEs (Art 28)	€5m	Per undertaking per project
20 Revenue costs for process and organisational innovation (Art 29)	€7.5m	Per undertaking per project
21 R&D in the fisheries & aquaculture sectors (Art 30)	No limit set	Rules for fisheries require results are of common interest & widely publicised
22 Training aid (Art 31)	€2m	Per project

<b>Type of GBER aid</b>	<b>Aid level above which notification for prior approval is required</b>	<b>Comment</b>
23 Wage subsidies for recruiting disadvantaged workers (Art 32)	€5m	Per undertaking per year
24 Wage subsidies for recruiting workers with disabilities (Art 33)	€10m	Per undertaking per year
25 Investment aid to Exceed Environmental Standards (Art 36)	€15m	Per undertaking per project
26 Aid for extra costs of early Adoption of New Environmental Standards (Art 37)	€15m	Per undertaking per project
27 Aid for extra costs of energy saving investments (Art 38)	€15m	Per undertaking per project
28 Aid for extra costs of energy saving investments in buildings (Art 39)	€10m	Per undertaking per project in the form of loans or guarantees
29 Aid for extra costs of high efficiency Co-generation (Art 40)	€15m	Per undertaking per project
30 Aid for extra capital costs of Renewable Energy production (Art 41)	€15m	Per undertaking per project
31 Remediating contaminated sites (Art 45)	€20m	Per undertaking per project
32 Extra capital costs of energy efficient district heating/cooling (Art 46)	€20m	Per undertaking per project
33 Investment in recycling & re-using waste produced by third parties (Art 47)	€15m	Per undertaking per project
34 Investment in energy infrastructures (Art 48)	€50m	Per undertaking per project
35 Environmental Studies for Energy Saving & Renewables (Art 49)	€15m	Per undertaking per project
36 Broadband Infrastructure (Art 52)	€50m	Per project

Type of GBER aid	Aid level above which notification for prior approval is required	Comment
37 Capital or revenue costs of culture & Heritage conservation (Art 53)	€150m capital €75km revenue	Per project Per undertaking per year
38 Aid schemes for production & distribution of cultural audio-visual works (Art 54)	€50m	Per scheme per year
39 Construction and operation of sport and multi- purpose recreational infrastructures (Art 55)	€30m of aid or total costs exceeding €100m Operating aid €2m	Per project Per infrastructure per year
40 Investment in local infrastructures (Art 56)	€10m of aid or €20m of total costs	Per infrastructure
41 Aid for regional airports (Art. 56a)	None as long as the eligibility criteria and all conditions are fulfilled	The size of the airport in terms of passenger and freight traffic is the determining factor
42 Aid for maritime ports (Art. 56b)	€130m of eligible costs or €150m of eligible costs if	Per project Port concerned is in the Core Network Corridor Workplan

### **PART 3 - NACE CLASSIFICATION**

The European Commission established a common statistical classification of economic activities in the 1990s called “Nomenclature Generale des Activites Economiques dans l’Union Europeenne” (the general name for economic activities in the European Union) shortened to NACE. This is similar to Standard Industrial Classification (“**SIC**”) codes used in the UK. There are similarities between the two but the NACE codes were revised in 2006 and are much more detailed than those under SIC.

For large firms to qualify for Regional Aid under the General Block Exemption Regulation 2014-2020 they need to be engaging in a different economic activity from their current NACE classification. Thus it is important to document the firm’s existing NACE code and the new NACE code of the proposed activity. The appraisal paper should clearly document the two codes and HMS should indicate the NACE code of the activity being funded.

This will require an amendment to HMS and in the meantime it is vital that appraisal papers indicate a clear audit trail to allow for transparency and reporting to the EC.

## **PART 4- SME DEFINITION**

Definition of micro, small and medium-sized enterprises adopted by the European Commission - extract from Annex 1 of the General Block Exemption Regulation (EU) No 651/2014 of 17th June 2014, OJEU L187/1 of 26th June 2014:

### **Article 1 - Enterprise**

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

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

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

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

- 1 An “autonomous enterprise” is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
- 2 “Partner enterprises” are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise). However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

- 2.1.1 public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
  - 2.1.2 universities or non-profit research centres;
  - 2.1.3 institutional investors, including regional development funds;
  - 2.1.4 autonomous local authorities with an annual budget of less than EUR 10 million and less than 5,000 inhabitants.
- 3 “Linked enterprises” are enterprises which have any of the following relationships with each other:
- 3.1 an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
  - 3.2 an enterprise has the right to appoint or remove a majority of the members of the administrative,
  - 3.3 management or supervisory body of another enterprise;
  - 3.4 an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
  - 3.5 an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

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

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

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

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

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

#### **Article 4 - Data used for the staff headcount and the financial amounts and reference period**

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

#### **Article 5 - Staff headcount**

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

- 1 employees;
- 2 persons working for the enterprise being subordinated to it and deemed to be employees under national law; 26.6.2014 EN Official Journal of the European Union L 187/71
- 3 owner-managers;

- 4 partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

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

#### **Article 6 - Establishing the data of an enterprise**

- 1 In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

- 2 The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

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

- 3 For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

- 4 Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.