ANNEX

COMMISSION REGULATION (EU) …/…

of XXX

amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

DRAFT

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

After consulting the Advisory Committee on State aid,

Whereas:

(1) Following the adoption of the revised Guidelines on regional State aid for the period as from 1 January 2022[2], definitions and Articles related to regional aid in Commission Regulation (EU) No 651/2014[3] should be aligned to ensure consistency between the different sets of rules targeting the same objectives. The scope of Section 1 of Chapter III of Regulation (EU) No 651/2014 should be adjusted to take into account changes in the market and the Green deal[4] and the European Climate Law[5] objectives. Operating aid to prevent and reduce depopulation should be extended to sparsely populated areas, in order to facilitate better support in areas facing demographic challenges. To facilitate the application of Regulation (EU) No 651/2014 for aided projects below EUR 50 million carried out by small and medium-sized enterprises ('SMEs'), the notification thresholds should be adjusted accordingly and clarified.

(2) Aid for the construction or upgrade of testing and experimentation infrastructures mainly addresses the market failure stemming from imperfect and asymmetric information or coordination failures. Contrary to research infrastructures, testing and

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1 OJ L 248, 24.9.2015, p. 1.

2 Communication from the Commission, 'Guidelines on regional State aid', C(2021) 2594 (OJ C 153, 29.4.2021, p. 1).

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

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

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

experimentation infrastructures are used predominantly for economic activities and, more specifically, for the provision of services to undertakings. Constructing or upgrading a state of the art testing and experimentation infrastructure involves high up-front investment costs, which together with an uncertain client base, can render access to private financing difficult. Access to publicly funded testing and experimentation infrastructures must be granted on a transparent and non-discriminatory basis and on market terms to multiple users. To facilitate users' access to testing and experimentation infrastructures, their user fees can be reduced in compliance with other provisions of Regulation (EU) No 651/2014 or the de minis Regulation[6]. If those conditions are not respected, then the measure may entail State aid to the users of the infrastructure. In such situations, aid to the users or for the construction or upgrade is only exempted from the notification requirement, if the aid to the users is granted in compliance with the applicable State aid rules. Multiple parties may also own and operate a given testing and experimentation infrastructure, and public entities and undertakings may also use the infrastructure collaboratively. Testing and experimentation infrastructures are also known as technology infrastructures.

(3) Aid for innovation clusters aims at tackling market failures linked with coordination problems hampering the development of clusters, or limiting the interactions and knowledge flows within clusters. State aid can either support investment in open and shared infrastructures for innovation clusters, or support the operation of clusters, with a view to enhancing collaboration, networking and learning. Operating aid for innovation clusters should, however, only be allowed on a temporary basis and for a limited period. To facilitate access to the innovation cluster facilities or participation in the innovation cluster's activities access can be offered at reduced prices in compliance with other provisions of Regulation (EU) No 651/2014 or the *de minimis* Regulation[7]. Depending on the specific objectives pursued or the activities and functionalities offered, Digital Innovation Hubs (including European Digital Innovation Hubs funded under the centrally managed Digital Europe Programme established by Regulation (EU) 2021/694 of the European Parliament and of the Council[8]) whose aim is to stimulate the broad uptake of digital technologies such as artificial intelligence, cloud, edge and high-performance computing and cybersecurity by industry (in particular by SMEs) and public sector organisations may qualify as an innovation cluster by themselves in the meaning of this Regulation.

(4) Aid for innovation activities is mainly targeted at market failures related to positive externalities (knowledge spill-overs), coordination difficulties and, to a lesser extent, asymmetric information. With respect to SMEs such innovation aid may be awarded for obtaining, validating and defending patents and other intangible assets, for the secondment of highly qualified personnel, and for acquiring innovation advisory and support services, for example those provided by research and knowledge

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

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

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

dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters.

(5) In view of the adoption of revised Guidelines on State aid to promote risk finance investments for the period as from 2022, definitions and Articles related to access to finance for SMEs in Regulation (EU) No 651/2014/EU should be aligned with the revised Guidelines to ensure consistency. Aid for the access to finance for SMEs addresses a market failure that prevents SMEs from attracting the financing they require to develop to their full potential: SMEs, especially when they are young, are often unable to demonstrate their credit-worthiness to investors. The evaluation[9] of the relevant rules carried out in 2019 and 2020, has confirmed that this market failure persists, a situation that is likely to be worsened by the COVID-19 pandemic. To further facilitate the deployment of such aid and to provide more clarity, the structure of the provisions on risk finance has been revised.

(6) In view of the adoption of revised Guidelines on State aid for climate, environmental protection and energy for the period as from 2022, definitions and Articles in Regulation (EU) No 651/2014 related to aid in the fields of environmental protection, including climate protection, and energy should be aligned to ensure consistency between the different sets of rules targeting the same objectives. The scope of Section 7 of Regulation (EU) No 651/2014 should be adjusted to take into account changes in the market and the Green Deal and the European Climate Law objectives, including the provisions introduced to amend Regulation (EU) No 651/2014 in 2021[10].

(7) Investment aid aimed at supporting the acquisition or the leasing of zero-emission vehicles or clean vehicles or the retrofitting of vehicles, allowing them to qualify as zero-emission vehicles or clean vehicles, contributes to the shift towards zero-emission mobility and to achieving the ambitious targets of the Green Deal, mainly the reduction of greenhouse gas emissions in the transport sector. In light of the experience gained by the Commission regarding State aid measures supporting clean mobility, it is appropriate to introduce specific compatibility conditions to ensure that the aid is proportionate and does not unduly distort competition by shifting demand away from cleaner alternatives. [The scope of the provisions concerning investment aid for electric recharging and hydrogen refuelling infrastructure should be enlarged to also cover refuelling infrastructure supplying low-carbon hydrogen.] Moreover, aid for recharging and refuelling infrastructure should also be available for infrastructure that is not publicly accessible.

(8) It is appropriate to broaden the scope of Regulation (EU) No 651/2014 by introducing compatibility conditions for aid for hydrogen in line with the objectives of the Hydrogen strategy for a climate-neutral Europe[11] and for storage. Those conditions should be added to the existing provisions concerning aid for the promotion of energy from renewable sources. Aid for the promotion of hydrogen should be considered compatible with the internal market and be exempted from the notification

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

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

11 Communication from the Commission to the European Parliament, the European Council, the Council, the European Social and Economic Committee and the Committee of the Regions, 'A hydrogen strategy for a climate-neutral Europe', COM(2020) 301 final.

requirement of Article 108(3) of the Treaty, only insofar as exclusively renewable hydrogen is produced. Aid for storage projects should be exempted from the notification requirement only to the extent that storage and renewable energy generation facilities are connected.

(9) The provisions of Regulation (EU) No 651/2014 concerning operating aid for the promotion of energy from renewable sources should be expanded for renewable energy communities, in accordance with Directive (EU) No 2018/2001 of the European Parliament and of the Council[12].

(10) It is appropriate to broaden the scope of Regulation (EU) No 651/2014 by introducing compatibility conditions for investment aid for the rehabilitation of natural habitats and ecosystems, the protection and restoration of biodiversity and nature-based solutions for climate change adaptation and mitigation in line with the objectives of the Biodiversity Strategy for 2030[13], the European Climate Law[14] and the EU strategy for adaptation to climate change[15]. Those conditions should be added to the existing provisions concerning aid for the remediation of contaminated sites. Investment aid in those areas should therefore be considered compatible with the internal market and be exempted from the notification requirement of Article 108(3) of the Treaty, under certain conditions. In particular, it is necessary to ensure compliance with the 'polluter pays principle', according to which the costs of measures to deal with pollution should be borne by the polluter who causes the pollution.

(11) The provisions of Regulation (EU) No 651/2014 concerning investment aid for waste recycling and re-utilisation should be adapted and expanded to address developments in the market and, in accordance with the Circular Economy Action Plan[16], to reflect the shift towards measures aimed at promoting resource efficiency and supporting the transition towards a circular economy.

(12) It is necessary to broaden the scope of Regulation (EU) No 651/2014 by introducing compatibility conditions for aid in the form of environmental tax or levy reductions. Environmental taxes or parafiscal levies are imposed in order to increase the costs of environmentally harmful behaviour, thereby discouraging such behaviour and increasing the level of environmental protection. While reductions in environmental taxes or parafiscal levies may adversely impact that objective, such an approach may nonetheless be needed where the beneficiaries would otherwise be placed at such a competitive disadvantage that it would not be feasible to introduce the environmental tax or parafiscal levy in the first place.

(13) With regard to investment aid for district heating systems, the compatibility conditions laid down in Article 46 of Regulation (EU) No 651/2014 on support for investments in

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

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

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

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

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

district heating systems that are based on fossil fuels, notably on natural gas, as well as investments in or upgrades to distribution networks, should be adjusted to take into account the Green Deal and the European Climate Law objectives, and in particular the Sustainable Europe Investment Plan (SEIP)[17].

(14) With regard to investments in energy infrastructure, the scope of Regulation (EU) No 651/2014 should be enlarged to block exempt support for investments not located in "assisted areas". Furthermore, the compatibility conditions of Regulation (EU) No 651/2014 on the support to energy infrastructure investments, for natural gas, need to be adjusted to take into account the Green Deal objectives and to ensure necessary compliance with the 2030 and 2050 climate targets.

(15) Given the specificities for funding of projects in the defence sector and the rules under the European Defence Fund, where maximum funding rates are set in order not to limit the overall public funding but to attract co-funding from Member States, Article 8 should be amended to allow for combinations of Union centrally managed funding and State aid of up to the total project costs.

(16) Regulation (EU) No 651/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 2 is amended as follows:

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

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

(b) In the case of a company where at least some of its members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME that fulfils the condition in Article 21 paragraph 3, point (b), and qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some of its members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

[17] Commission Communication- Sustainable Europe Investment Plan European Green Deal Investment Plan, COM/2020/21 final.

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

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

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

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

where: R is the maximum aid intensity applicable in the area concerned, excluding the increased aid intensity for SMEs; A is the part of eligible costs equal to EUR 50 million; 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;”;

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

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

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

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

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

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

(f) the following point (39a) is inserted:

“(39a) ‘arm's length’ means that the conditions of the transaction between the contracting parties do not differ from those which would be stipulated between independent 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;”;

(g) point (40) is deleted;

(h) point (42) is replaced by the following:

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

(i) point (43) is replaced by the following:

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

(a) pig iron and ferro-alloys:

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

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

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

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

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

(d) cold finished products:

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

(e) tubes:

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

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

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

(k) point (44) is deleted;

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

"(45) 'transport sector' means the transport of passengers by aircraft, maritime transport, road or rail and by inland waterway or freight transport services for hire or reward; more specifically, the 'transport sector' means the following activities in terms of the statistical classification of economic activities (NACE Rev. 2), established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council*:

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

(b) NACE 50: Water transport;

(c) NACE 51: Air transport, excluding NACE 51.22 Space transport;

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

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

"(47a) 'completion of the investment' means the moment when the investment is considered by the national authorities as completed or three years after the start of works, whichever is earlier;";

(n) points (49) to (51) are replaced by the following:

"(49) 'initial investment' means:

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

– the setting-up of a new establishment;

– the extension of the capacity of an existing establishment;

– the diversification of the output of an establishment into products or services not previously produced in the establishment; or

– a fundamental change in the overall production process of the product(s) or the overall provision of the service(s) concerned by the investment in the establishment;

or

(b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased. The sole acquisition of the shares of an undertaking does not qualify as initial investment.

A replacement investment thus does not constitute an initial investment.

(50) 'same or a similar activity' means an activity in the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities (NACE Rev. 2) established by Regulation (EC) No 1893/2006;

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

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

– the setting up of a new establishment;

– the diversification of the activity of an establishment, provided that the new activity is not the same or a similar activity to the activity previously performed in the establishment;

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

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

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

"(72) 'independent private investor' means an investor who is private and independent, as set out in this point. "Private" investors will typically include banks investing at own risk and from own resources, private endowments and foundations, family offices and business angels, corporate investors, insurance companies, pension funds, private individuals, and academic institutions. The European Investment Bank, 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, as well as a public or private law body with a public service mission will not be considered private investors for the purposes of this definition. "Independent" means that a private investor is not a shareholder of the eligible undertaking in which it invests.

Upon the creation of a new company, private investors, including the founders, are considered to be independent from that company;

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

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

"(79) 'entrusted entity' means the European Investment Bank and the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a 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 2014/24/EU of the European Parliament and of the Council* or in accordance with Article 38(4), point (b)(iii) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council** or Article 59(3) of Regulation (EU) 2021/1060 of the European Parliament and of the Council***, whichever is applicable;

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

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

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

(q) point 80 is replaced by the following:

"(80) 'innovative enterprise' means an enterprise that meets one of the following conditions:

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

(b) its research and development costs represent at least 10 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor;

(c) it has recently been awarded a Seal of Excellence quality label by the European Innovation Council in accordance with the Horizon 2020 work programme 2018-2020 adopted by Commission Implementing Decision C(2017)7124* or with Articles 2(23) and 15(2) of Regulation (EU) 2021/695 of the European Parliament and of the Council** or has recently received an investment by the European Innovation Council Fund, such as an investment in the context of the Accelerator Programme as referred to in Article 48(7) of Regulation (EU) 2021/695 of the European Parliament and of the Council.

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

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

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

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

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

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

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

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

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

(t) point (89) is deleted;

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

"(92) 'innovation clusters' means structures or organised groups of independent parties (such as innovative start-ups, small, medium and large enterprises, as well as research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures, Digital Innovation Hubs, non-for-profit organisations and other related economic actors) designed to stimulate innovative activity and new ways of collaboration, such as by digital means, by promoting, 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;";

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

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

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

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

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

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

"(98a) 'testing and experimentation infrastructures' means facilities, equipment, capabilities and related support services required to develop, test and upscale technology to advance through industrial research and experimental development activities from validation in a laboratory to a validation representative of the operational environment, and the users of which are mainly industrial players, including SMEs, which seek support to develop and integrate innovative technologies for the development of new products, processes and

services, whilst ensuring feasibility and regulatory compliance*. Testing and experimentation infrastructures are sometimes also known as technology infrastructures;

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* See Commission Staff Working Document, 'Technology Infrastructures', SWD(2019) 158 final, 8.4.2019.";

(x) point (101) is replaced by the following:

"(101) 'environmental protection' means any action designed to remedy or prevent damage to physical surroundings or natural resources by human activities, including to adapt to and mitigate climate change, to reduce the risk of such damage or to lead to more efficient and sustainable use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions;";

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

"(102a) 'recharging infrastructure' means a fixed or mobile installation supplying vehicles with electricity for transport purposes;

(102b) 'refuelling infrastructure' means a fixed or mobile installation supplying vehicles with hydrogen for transport purposes;

(102c) 'renewable hydrogen' means hydrogen produced using only renewable sources of energy, in accordance with [Reference to delegated act by DG ENER pursuant to Article 28 of the RED II];";

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

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

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

(102e) 'low-carbon hydrogen' means fossil-based hydrogen with carbon capture and storage or electricity-based hydrogen, where that hydrogen achieves life-cycle greenhouse gas emissions savings of at least [73.4 %] [resulting in life-cycle greenhouse gas emissions below 3 tCO_2eq/tH_2] relative to a fossil fuel comparator of [94g CO_2e/MJ (2.256 tCO_2eq/tH_2)]. The carbon content of electricity-based hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid;

(102f) 'clean vehicle' means:

(a) a clean vehicle as defined in Article 4, point (4)(a) of Directive 2009/33/EC of the European Parliament and of the Council*;

(b) until 31 December 2025, a low-emission heavy-duty vehicle as defined in Article 3, point (12) of Regulation (EU) 2019/1242 of the European Parliament and of the Council**;

(c) until 31 December 2025, a clean vehicle as defined in Article 4, point (4)(b) of Directive 2009/33/EC and not falling within the scope of Regulation (EU) 2019/1242;

(d) until 31 December 2025, an inland vessel for passenger transport that has a hybrid or dual fuel engine deriving at least 50 % of its energy from zero direct (tailpipe) CO_2 emission fuels or plug-in power for its normal operation;

(e) until 31 December 2025, an inland vessel for freight transport with direct (tailpipe) emissions of CO_2 per tonne kilometre (g CO_2/tkm), calculated (or estimated in case of new vessels) using the International Maritime Organization Energy Efficiency Operational Indicator (EEOI), 50 % lower than the average reference value for emissions of CO_2 determined for heavy duty vehicles (vehicle subgroup 5- LH) in accordance with Article 11 of Regulation (EU) 2019/1242;

(f) a sea and coastal vessel for port operations or for auxiliary activities that has zero direct (tailpipe) CO_2 emissions;

(g) until 31 December 2025, a sea and coastal vessel for passenger, freight transport, for port operations or for auxiliary activities that has a hybrid or dual fuel engine deriving at least 25 % of its energy from zero direct (tailpipe) CO_2 emission fuels or plug-in power for its normal operation at sea and in ports, or that has an attained EEOI value 10 % below the EEOI requirements applicable on 1 April 2022 and the vessel is able to run on zero direct (tailpipe) CO_2 emission fuels or on fuels from renewable sources;

(h) a sea and coastal vessel for freight transport that is used exclusively for operating coastal and short sea services designed to enable modal shift of freight currently transported by land to sea and that has direct (tailpipe) CO_2 emissions, calculated using the EEOI, 50 % lower than the average reference CO_2 emissions value determined for heavy duty vehicles (vehicle sub group 5-LH) in accordance with Article 11 of Regulation (EU) 2019/1242;

(i) rolling stock that has zero direct tailpipe CO_2 emissions when operated on a track with necessary infrastructure and that uses a conventional engine where such infrastructure is not available (bimode);

(102g) ‘zero-emission vehicle’ means:

(a) a vehicle falling within the scope of Regulation (EU) 168/2013 of the European Parliament and of the Council*** with tailpipe emissions of CO_2 equal to 0g CO_2e/km, calculated in accordance with the requirements laid down in Article 24 and Annex V of that Regulation;

(b) a vehicle of category M1, M2 or N1 with zero tailpipe CO_2 emissions, as determined in accordance with the requirements laid down in Commission Regulation (EU) 2017/1151****;

(c) a zero-emission heavy duty vehicle as defined in Article 4, point (5) of Directive 2009/33/EC;

(d) an inland or sea and coastal vessel for passenger or freight transport with zero direct (tailpipe/exhaust) CO_2 emissions;

(e) rolling stock with zero direct (tailpipe) CO_2 emissions;

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

(a) a road vehicle of category M1, M2, N1, M3, N2, N3 or L;

(b) an inland or a sea and coastal vessel for passenger or freight transport;

(c) rolling stock;

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

** Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO2 emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC (OJ L 198, 25.7.2019, p. 202).

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

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

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

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

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

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

"(103f) 'energy savings' means energy savings as defined in Article 2, point (5) of Directive 2012/27/EU";

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

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

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

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

(ae) the following point (108b) is inserted:

"(108b) 'green cogeneration' means cogeneration using 100 % renewable energy sources as an input for the production of heat and power;";

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

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

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

"(109a) 'renewable energy community' means renewable energy community as defined in Article 2, point (16) of Directive (EU) 2018/2001;";

(ah) point (110) is replaced by the following:

"(110) 'renewable energy sources' means the sources of renewable energy as defined in Article 2, point (1), of Directive (EU) 2018/2001;";

(ai) points (111), (112) and (113) are deleted;

(aj) points (114) and (115) are replaced by the following:

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

(115) 'balancing' means balancing as defined in Article 2, point (10) of Regulation (EU) 2019/943 of the European Parliament and of the Council*;

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

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

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

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

"(117) 'biomass' means biomass as defined in Article 2, point (24), of Directive (EU) 2018/2001";

(am) the following points (117a) to (117e) are inserted:

"(117a) 'advanced biofuels' means biofuels as defined in Article 2, point (34), of the Directive (EU) 2018/2001;

(117b) 'biofuels' means biofuels as defined in Article 2, point (33), of Directive (EU) 2018/2001;

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

(117d) 'bioliquids' means bioliquidsas defined in Article 2, point (32), of Directive (EU) 2018/2001;

(117e) 'biomass fuels' means biomass fuels as defined in Article 2, point (27), of Directive (EU) 2018/2001;";

(an) point (119) is replaced by the following:

"(119) '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 or so that producers and consumers are oriented towards activities which better respect the environment;";

(ao) point (121) is deleted:

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

"(121a) 'remediation' means actions, such as the removal or detoxification of contaminates or excess nutrients from soil and water, that aim at removing sources of degradation;

(121b) 'rehabilitation' means actions that aim at reinstating a level of ecosystem functioning on degraded sites for renewed and ongoing provision of ecosystem services;

(121c) 'ecosystem' means an ecosystem as defined in Article 2, point (13) of Regulation (EU) 2020/852 of the European Parliament and of the Council*;

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

* Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).";

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

"(123a) 'pollutant' means a pollutant as defined in Article 2, point (10) of Regulation (EU) 2020/852 of the European Parliament and of the Council;

(123b) 'nature-based solution' means an action to protect, sustainably manage and restore natural or modified ecosystems that addresses societal challenges in an effective and responsive manner, simultaneously improving human well-being and providing biodiversity benefits;

(123c) 'restoration' means the process of assisting the recovery of an ecosystem as a means of conserving biodiversity and ecosystem resilience, including measures to improve the condition of an ecosystem and re-create or re-establish an ecosystem where that condition was lost;";

(ar) point 124 is replaced by the following:

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

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

"(124a) 'district heating' and/or 'district cooling' means district heating or district cooling as defined in Article 2, point (19), of Directive 2010/31/EU of the European Parliament and of the Council*;

(124b) 'district heating and cooling systems', consist of heat generation facilities (heating/cooling production plants), the heating/cooling storage and distribution network (both 'primary'- or transmission- and 'secondary' network of pipelines to supply heat to consumers). Reference to district heating is to be interpreted as district heating and/or cooling systems (DH/CS), depending on whether the networks supply heat or cooling jointly or separately;

* Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).";

(at) the following points (128a) to (128h) are inserted:

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

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

(128c) 'treatment' means treatment as defined in Article 3, point (14) of Directive 2008/98/EC;

(128d) 'recovery' means recovery as defined in Article 3, point (15) of Directive 2008/98/EC;

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

(128f) 'other products, materials or substances' means by-products referred to in Article 5 of Directive 2008/98/EC, agricultural and forestry residues, waste water, rain water and runoff

water, minerals, nutrients, residual gases from production processes, and redundant products, parts and materials;

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

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

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

(au) point (129) is deleted;

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

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

(a) concerning electricity:

(i) transmission and distribution systems, whereas ‘transmission’ means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply and whereas ‘distribution’ means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;

(ii) any equipment or installation essential for the systems referred to in point (i) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;

(iii) fully integrated network components , as defined in Article 2, point (51) of the Directive (EU) 2019/944*;

(iv) smart electricity grids, that is to say systems and components integrating information and communications technology (‘ICT’), through operational digital platforms, control systems and sensor technologies both at transmission and distribution level, aiming at a more efficient and intelligent electricity transmission and distribution network, increased capacity to integrate new forms of generation, storage and consumption and facilitating new business models and market structures;

(v) off-shore electricity grids, that is to say any equipment or installation of the systems referred to in point (i), having dual functionality: interconnection and transmission or distribution of offshore renewable electricity from the offshore generation sites to two or more countries, as well as any offshore adjacent equipment or installation essential to operate safely, securely and efficiently, including protection, monitoring and control systems, and necessary substations if they also ensure technology interoperability inter alia interface compatibility between different technologies;

(b) concerning gas:

(i) transmission and distribution pipelines for the transport of natural gas, bio gas and renewable gaseous fuels of non-biological origin 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');

(iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;

(v) smart gas grids, which means any of the following equipment or installation aiming at enabling and facilitating the integration of renewable and low-carbon gases (including biomethane or hydrogen) into the network: digital systems and components integrating ICT, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission, distribution and consumption within a gas network. Furthermore, smart grids may also include equipment to enable reverse flows from the distribution to the transmission level and related necessary upgrades to the existing network;

(c) concerning hydrogen:

(i) transmission pipelines for the transport of hydrogen, mainly high-pressure hydrogen, as well as pipelines for the local distribution of hydrogen, giving access to multiple network users on a transparent and non-discriminatory basis;

(ii) underground storage facilities connected to the high-pressure hydrogen pipelines referred to in point (i);

(iii) dispatch, reception, storage and regasification or decompression facilities for liquefied hydrogen or hydrogen embedded in other chemical substances with the objective of injecting the hydrogen into the grid;

(iv) any equipment or installation essential for the hydrogen system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations.

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

(d) concerning carbon dioxide (CO_2):

(i) pipelines, other than upstream pipeline network, used to transport CO_2 from more than one source, i.e. industrial installations (including power plants) that produce CO_2 gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of CO_2 pursuant to Article 3 of Directive 2009/31/EC of the European Parliament and of the Council** or for the purpose of use of CO_2 as feedstock or to enhance the yields of biological processes;

(ii) facilities for liquefaction and buffer storage of CO_2 in view of its further transportation. This does not include infrastructure within a geological formation used for the permanent geological storage of CO_2 pursuant to Article 3 of Directive 2009/31/EC and associated surface and injection facilities;

(iii) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems.

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

(e) infrastructure used for transmission or distribution of heat/steam from multiple producers or users, based on use of zero or low carbon heat, steam or residual heat from industrial applications or from production processes (waste heat);

(f) Projects of Common Interest, as defined in TEN-E legislation (Article 2, point (4) of Regulation (EU) 347/2013 of the European Parliament and of the Council***);

(g) concerning other types of energy infrastructure: other infrastructure categories which share the same features as the categories referred to in points (a) to (f) above. This in particular concerns infrastructure which enable physical or wireless connection of zero or low carbon energy (or energy carrier) producers and users from multiple access and exit points and which are open to access by third parties not belonging to the infrastructure owner or manager undertakings;

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

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

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

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

(aw) the following points (130a) and (130b) are inserted:

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

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

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

"(131) 'internal energy market legislation' includes Directive (EU) 2019/944 of the European Parliament and of the Council, Directive 2009/73/EC of the European Parliament and of the Council*, Regulation (EU) 2019/943 of the European Parliament and of the Council and Regulation (EC) No 715/2009 of the European Parliament and of the Council**;

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

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

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

"(131a) 'carbon capture and storage' or 'CCS' means a set of technologies that captures the (CO_2) emitted from industrial plants based on fossil fuels or biomass, including power plants, transports it to a storage site and injects the CO_2 in suitable underground geological formations for the purpose of permanent storage of CO_2;

(131b) 'carbon capture and utilisation' or 'CCU' means a set of technologies that captures the CO_2 emitted from industrial plants based on fossil fuels or biomass, including power plants, and transports it to a CO_2-consumption site;";

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

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

"(a) for regional investment aid: for an investment with eligible costs of EUR 100 million or more, the aid amounts per undertaking per investment projects as set out below:

– in cases of maximum regional aid intensity of 10 %: EUR 7.5 million;

– in cases of maximum regional aid intensity of 15 %: EUR 11.25 million;

– in cases of maximum regional aid intensity of 20 %: EUR 15 million;

– in cases of maximum regional aid intensity of 25 %: EUR 18.75 million;

– in cases of maximum regional aid intensity of 30 %: EUR 22.5 million;

– in cases of maximum regional aid intensity of 35 %: EUR 26.25 million;

– in cases of maximum regional aid intensity of 40 %: EUR 30 million;

– in cases of maximum regional aid intensity of 50 %: EUR 37.5 million;

– in cases of maximum regional aid intensity of 60 %: EUR 45 million;

– in cases of maximum regional aid intensity of 70 %: EUR 52.5 million;";

(b) the following point (j*a*) is inserted:

"(j*a*) for investment aid for testing and experimentation infrastructures: EUR 15 million per infrastructure;";

(c) point (s) and (s*a*) are replaced by the following:

"(s) for investment aid for environmental protection, unless otherwise specified: EUR 20 million per undertaking per investment project;

(s*a*) for aid for dedicated infrastructure and storage referred to in Article 36, paragraph 5: EUR 20 million per project;";

(d) points (s*b*) to (s*f*) are inserted:

"(s*b*) for investment aid for recharging or refuelling infrastructure referred to in Article 36a, paragraphs 1 and 2: EUR 20 million per undertaking per project and, in the case of schemes, an average annual budget of EUR 150 million;

(s*c*) for investment aid for the combined improvements of the energy and environmental performance of buildings referred to in Articles 38(3b) and 39(2a): EUR 30 million per project;

(s*d*) for investment aid for energy efficiency investments falling within the scope of Article 38(7): EUR 30 million of total nominal outstanding financing per project;

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

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

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

"(v) for operating aid for the promotion of electricity from renewable sources, as referred to in Article 42, and operating aid for the promotion of energy from renewable sources and renewable hydrogen in small scale installations and for the promotion of renewable energy communities, as referred to in Article 43: EUR 20 million per undertaking per project;";

(f) the following point (v*a*) is inserted:

"(v*a*) for operating aid for the promotion of energy from renewable sources and renewable hydrogen in small scale installations and for the promotion of renewable energy communities, as referred to in Article 43, and for operating aid for the promotion of electricity from renewable sources, as referred to in Article 42: EUR 250 million per year taking into account the combined budget of all schemes falling under the respective Article;";

(g) points (w) and (x) are replaced by the following:

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

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

(3) in Article 5, paragraph 2, the following point (g*a*) is inserted:

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

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

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

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

(4) Article 6 is amended as follows:

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

"(a) in the case of regional investment aid: that a project is carried out, which would not have been carried out in the area concerned or would not have been sufficiently profitable for the beneficiary in the area concerned or anywhere in the EEA in the absence of the aid.";

(b) in paragraph 5, the following points (m) and (n) are added:

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

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

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

"1. For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary. The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013, or Regulation (EU) 2021/1060 of the European Parliament and of the Council*, whichever is applicable provided that the operation is at least partly financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision.

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

(6) in Article 8, paragraph 2 is replaced by the following:

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

(7) in Article 9, paragraph 1 is replaced by the following:

"1. The Member State concerned shall ensure the publication on a comprehensive State aid website, at national or regional level of:

(a) the summary information referred to in Article 11 in the standardised format laid down in Annex II or a link providing access to it;

(b) the full text of each aid measure, as referred to in Article 11 or a link providing access to the full text;

(c) the information referred to in Annex III on each individual aid award exceeding EUR 100 000, or for beneficiaries active in primary agricultural production, other than those to which Section 2a applies, on each individual aid award for such production exceeding EUR 60 000 and for beneficiaries active in the fishery and aquaculture sector, other than those to which Section 2a applies, on each individual aid award exceeding EUR 30 000.

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

The publication obligations laid down in the first subparagraph shall not apply to aid granted to European Territorial Cooperation projects referred to in Article 20a, as well as European Innovation Partnership for agricultural productivity and sustainability ('EIP') Operational Group projects and community-led local development ('CLLD') projects under Article 19b.

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

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

(8) Article 13 is replaced by the following:

"*Article 13*

Scope of Regional aid

This Section shall not apply to:

(a) aid in the steel sector, the lignite sector and the coal sector;

(b) aid to the transport sector as well as the related infrastructure, and aid for energy generation, storage, transmission, distribution and infrastructure, except for regional investment aid in outermost regions and regional operating aid schemes;

(c) regional aid in the form of schemes which are targeted at a limited number of specific sectors of economic activity; schemes aimed at tourism activities or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;

(d) regional operating aid granted to undertakings whose principal activities fall under Section K 'Financial and insurance activities' of the NACE Rev. 2 or to undertakings that perform intra-group activities whose principal activities fall under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2.;

(e) aid covering investment costs for buildings, land, and equipment to the extent and as long as they are part of a project supported under Article 25.";

(9) Article 14 is amended as follows:

(a) in paragraph (3) the third sentence is replaced by the following:

"Aid to large enterprises shall only be granted for an initial investment that creates a new economic activity in the area concerned.";

(b) paragraphs (4), (5) and (6) are replaced by the following:

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

(a) investment costs in tangible and intangible assets; or

(b) the estimated wage costs of employment created as a result of an initial investment, calculated over two years; or

(c) a combination of part of the costs referred to in points (a) and (b) but not exceeding the amount of point (a) or (b), whichever is higher.

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

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

(c) the following paragraph 6a is inserted:

"6a. Costs related to the lease of tangible assets may be taken into account under the following conditions:

(a) for land and buildings, the lease must continue for at least five years after the expected date of completion of the investment for large enterprises, and three years for SMEs;

(a) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the aid beneficiary to purchase the asset at the expiry of the term of the lease.

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

(d) paragraph 7 is replaced by the following:

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

(e) in paragraph 8 is amended as follows:

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

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

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

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

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

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

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

(g) paragraphs 10 and 11 are deleted;

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

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

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

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

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

(10) in Article 15(3), the introductory phrase is replaced by the following:

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

(11) Article 17 is amended as follows:

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

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

(a) the costs of investment in tangible and intangible assets, provided they do not fal under the scope of Article 25;

(b) the estimated wage costs of employment directly created by the investment project, calculated over two years;

(c) a combination of part of the costs referred to in points (a) and (b) but not exceeding the amount of point (a) or (b), whichever is higher.

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

(a) an investment in tangible and intangible assets related to the setting-up of a new establishment; the extension of the capacity of an existing establishment; the diversification of the output of an establishment into products not previously produced in the establishment; or a fundamental change in the overall production process of the product(s) concerned by the investment in the establishment; or

(b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased. Sole acquisition of the shares of an undertaking does not qualify as investment. The transaction shall take place under market conditions. In principle, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. However, if a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets shall be bought from third parties unrelated to the buyer does not apply.

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

(b) paragraph 4 is amended as follows:

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

"(b) they shall be amortisable;";

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

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

(c) paragraph 6 is amended as follows:

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

"(b) 10 % of the eligible costs in the case of medium-sized enterprises;";

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

"(c) Where the aid intensity is calculated on the basis of paragraph 2, point (c), the maximum aid intensity shall not exceed the most favourable amount resulting from the application of that intensity on the basis of investment costs or wage costs.";

(12) Article 21 is replaced by the following:

"*Article 21*

Risk finance aid

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

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

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

(a) they have not been operating in any market;

(b) they have been operating in any market for less than 10 years following their registration and/or, in the case of innovative enterprises, seven years after their first commercial sale. For eligible undertakings that have taken over the activities of another enterprise or were formed through a merger, in which case the eligibility period also encompasses the operations of that enterprise or the merged companies. For eligible undertakings that are not subject to registration, the eligibility period is considered to start from either the moment when the enterprise starts its economic activity or the moment when it becomes liable to tax with regard to its economic activity, whichever is earlier;

(c) they require an initial risk finance investment which, based on a business plan prepared in view of a new economic activity, is higher than 50 % of their average annual turnover in the preceding 5 years. Investments aimed at significantly improving the environmental performance of the activity in line with Article 36 (2) and other environmentally sustainable investments as defined in Article 2(1) of Regulation (EU) 2020/852 of the European Parliament and of the Council shall be considered new economic activities if their initial funding requirements are above [30 %] of the average annual turnover in the preceding 5 years.

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

(a) the total amount of risk finance referred to in paragraph 8 is not exceeded;

(b) the possibility of follow-on investments was provided for in the original business plan;

(c) the undertaking receiving the follow-on investments has not become linked, within the meaning of Article 3(3) of Annex I, with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity is an SME.

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

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

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

8. The total outstanding amount of risk finance investment referred to in paragraph 5 shall not exceed EUR 15 million per eligible undertaking under any risk finance measure. In order to calculate this maximum risk finance investment amount, the following shall be taken into account:

(a) in the case of loans and quasi-equity investments structured as debt, the nominal amount of the instrument;

(b) in the case of guarantees, the nominal amount of the underlying loan.

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

(a) equity or quasi-equity, or financial endowment to provide risk finance investment directly or indirectly to eligible undertakings;

(b) loans to provide risk finance investment directly or indirectly to eligible undertakings;

(c) guarantees to cover losses from risk finance investment directly or indirectly to eligible undertakings.

10. Risk-reward sharing arrangements between the Member State or its entrusted entity and the financial intermediary shall be adequate and shall comply with the following:

(a) for risk finance aid in forms other than guarantees, asymmetric profit sharing shall be given preference over downside protection; 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 risk finance investment.

(b) for risk finance aid in the form of guarantees, the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at a maximum of 25 % of the underlying guaranteed portfolio. Only guarantees covering expected losses of the underlying guaranteed portfolio may be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.

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

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

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

(b) 40 % of the risk finance investment provided to the eligible undertakings referred to in paragraph 3 point (b);

(c) 60 % of the risk finance investment provided to eligible undertakings mentioned referred to in paragraph 3, point (c) and for follow-on risk finance investment in eligible undertakings after the eligibility period referred to in paragraph 3, point (b).

Finance provided by independent private investors benefitting from risk finance aid in the form of tax incentives under Article 21a shall not be taken into account for the purposes of reaching the aggregate private participation rates set out in the first subparagraph.

The private participation rates mentioned in the first subparagraph, points (b) and (c) shall be reduced to 20 % under (b) and 30 % under (c) for investments made in assisted areas designated in an approved regional aid map valid at the time of provision of the risk finance investment in application of Article 107(3), point (a) of the Treaty.

13. Where a risk finance measure is implemented through a financial intermediary targeting eligible undertakings at different development stages as referred to in paragraphs 3 and 4, the financial intermediary shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in the underlying portfolio and resulting from the application of the minimum participation rates to such investments as referred to in paragraph 12, unless the required participation from independent private investors is achieved at the level of the eligible undertakings.

14. Financial intermediaries and fund managers shall be selected through an open, transparent and non-discriminatory procedure in accordance with applicable Union and national laws. The procedure shall be based on objective criteria linked to experience, expertise and operational and financial capacity, and shall comply with the following conditions:

(a) it shall ensure that eligible financial intermediaries and fund managers are established in accordance with the applicable laws;

(b) it shall not discriminate between financial intermediaries and fund managers on the basis of their place of establishment or incorporation in any Member State;

(c) it may require that eligible financial intermediaries and fund managers fulfil predefined criteria objectively justified by the nature of the investments;

(d) it shall aim at establishing adequate risk-reward sharing arrangements as described in paragraph 10.

15. Risk finance measures shall ensure that the financial intermediaries receiving the public contribution take profit-driven decisions when providing eligible undertakings with risk finance investment. This obligation is met where all of the following conditions are fulfilled:

(a) the Member State, or the entity entrusted with the implementation of the measure, shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the risk finance measure, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the relevant portfolio of investments;

(b) risk finance investment provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing *ex ante* financial viability;

(c) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.

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

(a) they shall be obliged by law or contract to act in accordance with best practices and with the diligence of a professional manager acting in good faith and avoiding conflicts of interest; regulatory supervision shall apply;

(b) their remuneration shall conform to market practices. This requirement is presumed to be met as long as they are selected through an open, transparent and non-discriminatory selection procedure in accordance with in paragraph 14;

(c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing their own resources so as to ensure that their

interests are permanently aligned with the interests of the Member State or its entrusted entity;

(d) they shall set out an investment strategy, criteria and the proposed timing of investments;

(e) investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.

17. In a risk finance measure where risk finance investment is provided to eligible undertakings in the form of guarantees, loans or quasi-equity investments structured as debt, the financial intermediary shall undertake risk finance investments into eligible undertakings that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

18. Risk finance measures providing risk finance investments for SMEs that do not fulfil the conditions laid down in paragraph 3 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that all the following conditions are met:

(a) at the level of the SMEs, the aid fulfils the conditions laid down in Commission Regulation (EU) No 1407/2013*, Commission Regulation (EU) No 1408/2013** or Commission Regulation (EU) No 717/2014***, whichever is applicable;

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

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

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

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

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

(13) the following Article 21a is inserted:

"Article 21a

Risk finance aid in the form of tax incentives for private investors

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

Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Eligible undertakings are those determined by Article 21(3) and (4). The total risk finance investment provided under Article 21 and under this Article for each eligible undertaking shall not exceed the maximum amount laid down in Article 21(8).

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

4. In case the independent private investor provides risk finance directly to the eligible undertaking, only the acquisition of full-risk ordinary shares issued by an eligible undertaking shall constitute an eligible investment. Those shares shall be kept for at least 3 years. Replacement capital shall only be covered under the conditions laid down in Article 21(7). Losses arising upon disposal of the shares may be set against income tax. In the case of tax relief on dividends, any dividend received in respect of qualifying shares may be fully exempt from income tax. Similarly, in the case of capital gains tax relief, any profit on the sale of qualifying shares may be fully exempt from capital gains tax. Moreover, capital gains tax liability on disposal of qualifying shares may be deferred if reinvested in new qualifying shares within 1 year.

5. The maximum tax relief shall not exceed the maximum tax liability of the independent private investor for the tax to which the relief applies. In order to ensure an adequate participation of the independent private investor, in accordance with Article 21(12), the tax relief shall not surpass the following maximum thresholds:

(a) 50 % of the eligible investment carried out by the independent private investor if the final beneficiaries fall under Article 21(3), point (a);

(b) 35 % of the eligible investment carried out by the independent private investor if the final beneficiaries fall under Article 21(3), point (b);

(c) 20 % of the eligible investment carried out by the independent private investor if the final beneficiaries fall under Article 21(3), point (c) or for follow-on eligible investment after the eligibility period mentioned in Article 21(3), point (b).

The tax relief thresholds mentioned in the first subparagraph, points (b) and (c) may be increased up to 50 % under (b) and up to 35 % under (c) for investments made in assisted areas designated in an approved regional aid map in application of Article 107(3), point (a) of the Treaty.";

(14) Article 22 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

For eligible undertakings that are not subject to registration, the 5-year eligibility period is considered to start from either the moment when the enterprise starts its economic activity or the moment it becomes liable to tax with regard to its economic activity, whichever is earlier.

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

(b) the following paragraph 6 is added:

"6. In addition to the amounts in paragraphs 3 to 5 of this Article, start-up aid can take the form of a transfer of intellectual property rights (IPR) and related access rights, from a research organisation where the underlying IPR has been developed, if the transfer is:

(a) to a small and innovative enterprise;

(b) necessary to bring a new product or service to the market; and

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

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

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

(iii) the amount is the result of arm's length negotiations between the research organisation and the start-up;

(iv) in cases where the start-up has a right of first refusal as regards IPR generated in collaboration with the research organisation, where the research organisation exercises a reciprocal right to solicit more economically advantageous offers from third parties so that the collaborating start-up has to match its offer accordingly.

The absolute amount of the value of any contribution, both financial and non-financial, of the start-up to the costs of the research organisation's activities that resulted in the IPR concerned may be deducted from the market price.

While the value of the IPR established as described above can exceed EUR 0.8 million, the additional aid amount under this paragraph must not exceed EUR 0.8 million. The additional aid amount refers to the value of the IPR transferred and established as described above, including the above-mentioned deduction, that is not covered by own funds and/or other means.";

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

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

(16) Article 24 is amended as follows:

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

"2. The eligible costs shall be:

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

(b) the costs for investment research, as defined in Article 36(1) of the Commission Delegated Regulation 2017/565*, in an individual eligible undertaking pursuant to Articles 21, 21a and 22, provided this research is publicly disseminated, and, if it has been disseminated to clients of the investment research provider before public dissemination, is disseminated publicly in the same form and no later than 3 months after the first dissemination to clients.

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

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

(b) the following paragraph 4 is inserted:

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

(17) Article 25 is amended as follows:

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

"(e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project; without prejudice to Article 7(1) third sentence, indirect R&D project costs may also be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to [15 %], applied to total eligible direct R&D project costs. In this case, both categories of direct and indirect costs shall be established on the basis of normal accounting practices, shall comprise only eligible R&D project costs listed above in points (a) to (d), and shall be duly justified.";

(b) paragraph 6, point (b), is amended as follows:

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

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

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

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

(18) the following Article 26a is inserted:

"*Article 26a*

Investment aid for testing and experimentation infrastructures

1. Aid for the construction or upgrade of testing and experimentation infrastructures shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and

shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

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

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

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

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

(19) Article 27 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Investment aid for the innovation cluster should be granted exclusively to the entity owning the cluster facilities. Operating aid for the innovation cluster shall be granted exclusively to the owner of the facilities unless the facilities are rented out, against a market fee, to an entity operating the cluster and bearing the financial risk of its operation. In the latter case, the operating aid shall be granted exclusively to the entity operating the innovation cluster at its own risk. In cases where the cluster operator is also the owner of the cluster or a user of the cluster, or both, and in cases where the cluster operator is a consortium of actors without a separate legal personality, the financing, costs and revenues of the activities as cluster operator shall be accounted for separately, on the basis of consistently applied and objectively justifiable cost accounting principles, from all other types of activities of the same legal entity.";

(b) paragraph 4 is replaced by the following:

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

(20) in Article 28(2), point (c) is replaced by the following:

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

(21) Article 36 is amended as follows:

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

"*Article 36*

Investment aid for environmental protection, including climate protection

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

(b) the following paragraph 1a is inserted:

"1a. This Article shall not apply to measures for which more specific rules are laid down in Articles 36a, 36b and 38 to 48. This Article shall also not apply to investments in equipment, machinery and industrial production using fossil fuels, except those using natural gas. This Article shall apply to investments in equipment, machinery and industrial production using hydrogen to the extent that the hydrogen used qualifies as renewable hydrogen or low-carbon hydrogen. In such a case, the Member State shall ensure that the requirement to use renewable hydrogen [or low-carbon hydrogen] is complied with throughout the economic lifetime of the investment.";

(c) paragraph 2 is amended as follows:

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

"(a) it shall enable the beneficiary or another entity to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards; or

(b) it shall enable the beneficiary or another entity to increase the level of environmental protection resulting from its activities in the absence of Union standards; or";

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

"(c) it shall enable the beneficiary or another entity to increase the level of environmental protection resulting from its activities to comply with Union standards that are not yet in force.";

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

"2a. Investments in carbon capture and utilisation or storage ('CCUS') shall fulfil the following cumulative conditions:

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

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

(c) the investment costs shall not relate to the CO_2-emitting installation (industrial installation or power plant), but solely to the CCUS project.

2b. When the aid aims at reducing direct emissions, in particular greenhouse gas emissions, those reductions shall not be offset by increases in indirect emissions resulting from the same investment.";

(e) paragraph 3 is replaced by the following:

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

(f) paragraph 4 is deleted;

(g) paragraph 5 is replaced by the following:

"5. The eligible costs shall be the extra environmental investment costs determined by comparing the costs of the investment to those of a counterfactual investment that would be undertaken in the absence of the aid, as follows:

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

(b) where the counterfactual consists in the same investment being undertaken at a later point in time, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the costs of the counterfactual investment, discounted to the point in time when the aided investment would be undertaken;

(c) where the counterfactual would result in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the maintenance, repair and modernisation costs of the counterfactual investment, discounted to the point in time when the aided investment would be undertaken;

(d) in the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in NPV between the leasing of that equipment and the leasing of the equipment that would be used in the absence of the aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract;

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

Where the investment consists in an add-on investment to an already existing facility, for which there is no less environmentally-friendly counterfactual investment, the eligible costs shall be the total costs related to environmental protection.

The eligible costs may include costs for the construction of dedicated infrastructure and storage facilities for renewable or low-carbon hydrogen and waste heat that are necessary to enable the increase in the level of environmental protection as referred to in paragraphs 2 and 2a. The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.";

(h) paragraph 6 is replaced by the following:

"6. The aid intensity shall not exceed 40 % of the eligible costs. Where the investment results in zero direct emissions, the aid intensity may reach 50 %.";

(i) the following paragraphs 6a and 6b are inserted:

"6a. In case of investments relating to CCUS, the aid intensity shall not exceed 20 %.

6b. The aid intensity may reach 100 % of the eligible costs where aid is granted in a competitive bidding process as defined in Article 2, point (38), which fulfils all of the following additional conditions:

(a) the aid award shall be based on clear, transparent and non-discriminatory eligibility and selection criteria;

(b) the selection criteria shall be based primarily on the submitted bid or the clearing price;

(c) the selection criteria may also relate to other aspects, in particular environmental, technological, geographical or social aspects, provided these are linked to the objective of the measure. [The submitted bid or the clearing price shall not account for less than 75 % of the weighting of the selection criteria.]";

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

"*Article 36a*

Investment aid for recharging or refuelling infrastructure

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

2. This Article shall only cover aid granted for recharging or refuelling infrastructures that supply vehicles with electricity or with renewable or low-carbon hydrogen for transport purposes. The Member State shall ensure that the requirement to supply renewable or low-carbon hydrogen is complied with throughout the economic lifetime of the infrastructure. This Article is without prejudice to the possibility to grant aid for investments relating to alternative fuel infrastructure as part of port infrastructure under Articles 56b and 56c.

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

The eligible costs may also cover the investment costs of integrated on-site production of renewable electricity or the investment costs of storage units for storing renewable electricity or renewable or low-carbon hydrogen. The peak capacity of the integrated on-site renewable electricity production unit shall not exceed the maximum rated output of the recharging infrastructure to which it is connected.

4. Aid under this Article shall be granted in a competitive bidding process as defined in Article 2, point (38) which fulfils all of the following additional conditions:

(a) the aid award shall be based on clear, transparent and non-discriminatory eligibility and selection criteria;

(b) the selection criteria shall be based primarily on the submitted bid or the clearing price;

(c) the selection criteria may also relate to other aspects, in particular environmental, technological, geographical or social aspects, provided these are linked to the objective of the measure. The submitted bid or the clearing price shall not account for less than 75 % of the weighting of the selection criteria.

5. The aid intensity may reach up to 100 % of the eligible costs.

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

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

8. The necessity of aid to incentivise the deployment of recharging or refuelling infrastructure of the same category shall be established through an *ex ante* open public consultation or an independent market study. In particular, it shall be established that no such infrastructure is likely to be deployed on commercial terms within three years from the entry into application of the aid measure.

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

9. By way of derogation from paragraph 8, the necessity of aid for recharging or refuelling infrastructure for road vehicles shall be presumed where vehicles powered exclusively by electricity (for recharging infrastructures) or vehicles powered at least partially by hydrogen (for refuelling infrastructures) represent respectively less than 2 % of the total number of vehicles of the same category registered in the Member State concerned. For the purpose of this paragraph, passenger cars and light-duty commercial vehicles shall be considered as being part of the same category of vehicles.

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

(23) the following Article 36b is inserted:

"*Article 36b*

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

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

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

3. The eligible costs shall be the following:

(a) for investments consisting in the purchase of clean vehicles or zero-emission vehicles, the extra investment costs of purchasing the clean vehicle or the zero-emission vehicle shall be eligible costs. Those shall be calculated as the difference

between the investment costs of purchasing the clean vehicle or the zero-emission vehicle and the investment costs of purchasing a vehicle of the same category that complies with Union standards and would have been acquired without the aid;

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

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

4. Aid under this Article shall be granted in a competitive bidding process as defined in Article 2, point (38), which fulfils all of the following additional conditions:

(a) the aid award shall be based on clear, transparent and non-discriminatory eligibility and selection criteria;

(b) the selection criteria shall be based primarily on the submitted bid or the clearing price;

(c) the selection criteria may also relate to other aspects, in particular environmental, technological, geographical or social aspects, provided these are linked to the objective of the measure. The submitted bid or the clearing price shall not account for less than 75 % of the weighting of the selection criteria.

5. By way of derogation from paragraph 4, aid under this Article that is granted to an undertaking that has been awarded a public service contract in accordance with the rules laid down in Regulation (EC) No 1370/2007 of the European Parliament and of the Council* may be granted outside of a competitive bidding process.

6. The aid intensity shall not exceed:

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

(b) 60 % of the eligible costs for the purchase or the leasing of clean vehicles, or of the retrofitting of vehicles allowing them to qualify as clean vehicles.

7. Aid shall not be granted for the leasing of clean vehicles or zero-emission vehicles if the undertaking from which the vehicles are leased benefitted from aid for the purchase of the leased clean vehicles or zero-emission vehicles.

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* Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).";

(24) Article 37 is deleted.

(25) Article 38 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Aid shall not be granted under this Article for any investments undertaken to ensure that undertakings comply with Union standards already adopted, even if they are not yet in force.";

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

"2a. By way of derogation from paragraph 2, aid may be granted under this Article for improvements to the energy efficiency of buildings for the purpose of compliance with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalised at least 18 months before the standard enters into force.

2b. This Article does not cover aid for cogeneration and aid for district heating or cooling.";

(c) paragraph 3 is replaced by the following:

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

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

(b) where the counterfactual consists in the same investment being undertaken at a later point in time, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the costs of the counterfactual investment, discounted to the point in time when the aided investment would be undertaken;

(c) where the counterfactual would result in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the maintenance, repair and modernisation costs of the counterfactual investment, discounted the point in time when the aided investment would be undertaken;

(d) In the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in NPV between the leasing of that equipment and the leasing of the equipment that would be used in the absence of aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract;

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

(f) Where the investment consists in a clearly identifiable investment solely aimed at improving energy efficiency in the building, for which there is no less environmentally-friendly counterfactual investment, the eligible costs shall be the total costs related to environmental protection.";

(d) the following paragraphs 3a to 3d are inserted:

"3a. Provided that the aid induces a reduction in primary energy demand of at least 20 % compared to the situation prior to the investment in the renovation of existing buildings and primary energy savings of at least 10 % compared to the threshold set for the nearly zero-

energy building requirements in national measures implementing Directive 2010/31/EU in the case of new buildings, the entire investment costs necessary to achieve a higher level of energy efficiency shall constitute the eligible costs, where the investment relates to the improvement of the energy efficiency of one of the following:

(i) residential buildings;

(ii) buildings dedicated to the provision of education or social services;

(iii) buildings dedicated to activities related to public administration or to justice, law enforcement or fire-fighting and civil protection services;

(iv) buildings referred to in (i), (ii) or (iii) and in which activities other than those mentioned in (i), (ii) or (iii) occupy no more than 50 % of the internal floor area.

3b. For the buildings referred to in paragraph 3a, the aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

(a) the installation of integrated on-site renewable energy installations generating electricity, heat or cold;

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

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

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

(e) investments in green roofs and equipment for the recovery of rain water.

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

3c. The aid may be granted either to the building owner(s) or the tenant(s), depending on who is commissioning the energy efficiency works.

3d. Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building. Aid for the installation of oil-fired, coal-fired or gas-fired energy equipment shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty. Aid may be granted for the installation of more energy-efficient gas-fired energy equipment provided that it replaces oil-fired or coal-fired energy equipment and that it is ensured that the gas-fired energy equipment is replaced by equipment using renewable fuels by 2050 at the latest.";

(e) the following paragraphs 6a and 7 are inserted:

"6a. The aid intensity may be increased by 15 percentage points for aid granted to improve the energy efficiency of the buildings referred to in paragraph 3a, where the energy efficiency improvements lead to a reduction in primary energy demand of at least 40 % in the case of renovation of existing buildings.

7. Aid for the improvement of the energy efficiency of buildings may also relate to the facilitation of energy performance contracting subject to the following cumulative conditions:

(a) the support takes the form of a loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consists in a financial product aimed to refinance the respective provider (for example, factoring or forfaiting);

(b) the nominal amount of total outstanding financing provided under this paragraph per beneficiary does not exceed EUR 30 million;

(c) the support is provided to SMEs or small mid-caps that are providers of energy performance improvement measures;

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

(e) the energy performance contracting relates to a building referred to in paragraph 3a.";

(26) Article 39 is amended as follows:

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

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

2a. Where the investment relates to the improvement of the energy efficiency of (i) residential buildings, (ii) buildings dedicated to the provision of education or social services, (iii) buildings dedicated to public administration or to justice, police or fire-fighting services, or (iv) buildings referred to in (i), (ii) or (iii) and in which activities other than those mentioned in (i), (ii) or (iii) occupy no more than 50 % of the floor area, the aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

(a) the installation of integrated on-site renewable energy installations generating electricity, heat or cold;

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

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

(d) the installation of equipment for the digitalisation of the building, in particular to increase its smart-readiness. Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and, if necessary, the ancillary part of the passive network on the property to which the building belongs. Wiring or cabling for data networks outside the property is excluded;

(e) investments in green roofs and equipment for the recovery of rain water .

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

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

"5. The energy efficiency fund or other financial intermediary shall grant loans or guarantees to the eligible energy efficiency projects. The nominal value of the loan or the amount guaranteed shall not exceed EUR 20 million per project at the level of the final beneficiaries, except in the case of the combined investments referred to in paragraph 2a, where it shall not exceed EUR 30 million.";

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

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

(d) paragraph 10 is replaced by the following:

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

(e) the following paragraph 11 is added:

"11. Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building. Aid for the installation of oil-fired, coal-fired or gas-fired energy equipment shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty. Aid may be granted for the installation of more energy-efficient gas-fired energy equipment provided that it replaces oil-fired or coal-fired heating equipment and that it is ensured that the gas-fired energy equipment is replaced by equipment using renewable fuels by 2050 at the latest.";

(27) Article 40 is deleted;

(28) Article 41 is amended as follows:

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

"*Article 41*

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

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

(b) the following paragraph 1a is inserted:

"1a. Investment aid for storage projects under this Article shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that it is granted on the basis of a scheme open to combined renewable and storage projects (behind-the-meter), where both elements are installed and put into operation at the same time. The storage investment shall have as a maximum the same capacity as the connected renewable investment. Aid to storage connected to an existing renewable installation (behind-the-meter) may also be covered by the same scheme, where the storage investment fulfils the same

conditions and all investment projects (renewables and storage) are considered an integrated project for verification of compliance with the thresholds set out in Article 4.";

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

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

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

4. Investment aid for new or refurbished high-efficiency cogeneration units shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that they provide overall primary energy savings compared to separate production of heat and electricity as provided for by Directive 2012/27/EU or any subsequent legislation replacing this act in full or in part.";

(d) the following paragraph 4a is inserted:

"4a. Investment aid for high-efficiency cogeneration shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it is not for fossil fuel fired cogeneration installations, with the exception of natural gas where compliance with the 2030 and 2050 climate targets is ensured.";

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

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

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

7. The aid intensity shall not exceed:

(a) 30 % of the eligible costs for the production of energy from renewable energy sources, renewable hydrogen and high-efficiency cogeneration;

(b) 15 % of the eligible costs for projects involving electricity storage.";

(f) paragraphs 9 and 10 are replaced by the following:

"9. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, including green cogeneration.

10. Where aid is granted in a competitive bidding process on the basis of clear, transparent, non-discriminatory and objective criteria, defined ex ante in accordance with the objective of the measure and minimising the risk of strategic bidding, the aid intensity may reach 100 % of the eligible costs. Those criteria shall be published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition. The competitive bidding process shall fulfil all of the following criteria:

(i) the budget or volume related to the bidding process shall be a binding constraint in that it can be expected that not all bidders would receive aid;

(ii) the expected number of bidders shall be sufficient to ensure effective competition;

(iii) the design of undersubscribed bidding processes during the implementation of a scheme shall be corrected to restore effective competition in the subsequent bidding processes or as soon as possible;

(iv) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be avoided as they may undermine the efficiency of the process's outcome.";

(29) Article 42 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Aid shall be granted in a competitive bidding process on the basis of clear, transparent, non-discriminatory and objective criteria, defined ex ante in accordance with the objective of the measure and minimising the risk of strategic bidding. Those criteria shall be published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition. The competitive bidding process shall fulfil all of the following criteria:

(i) the budget or volume related to the bidding process shall be a binding constraint in that it can be expected that not all bidders would receive aid;

(ii) the expected number of bidders shall be sufficient to ensure effective competition;

(iii) the design of undersubscribed bidding processes during the implementation of a scheme shall be corrected to restore effective competition in the subsequent bidding processes or as soon as possible;

(iv) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be avoided as they may undermine the efficiency of the process's outcome.

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

(b) paragraph 7 is replaced by the following:

"7. Aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative.";

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

(d) paragraph 11 is replaced by the following:

"11. Aid shall only be granted until the plant generating the electricity from renewable sources has been fully depreciated in accordance with generally accepted accounting principles. Any investment aid received shall be deducted from the operating aid.";

(30) Article 43 is amended as follows:

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

"*Article 43*

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

1. Operating aid for the promotion of energy from renewable sources and renewable hydrogen in small scale installations and for the promotion of renewable energy communities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and

shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Operating aid for small-scale installations shall be exempted from the notification requirement of Article 108(3) of the Treaty only up to the following size thresholds:

(a) for electricity generation or storage projects: projects below the applicable threshold set out in Article 5 of Regulation (EU) 2019/943;

(b) for heat generation and renewable gas production technologies: projects below 400 kW installed capacity.

For the purpose of calculating those maximum capacities, small scale installations with a common connection point to the electricity grid shall be considered as one installation.";

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

"2a. Aid to renewable energy communities shall be exempted from the notification requirement of Article 108(3) of the Treaty only for projects with an installed capacity of less than 1 MW undertaken by entities falling with the definition of renewable energy community.

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

(c) paragraph 3 is replaced by the following:

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

(31) Article 44 is replaced by the following:

"*Article 44*

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

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

2. The beneficiaries of the tax reduction shall be selected on the basis of transparent and objective criteria and shall pay at least the respective Union minimum tax level required by Directive 2003/96/EC.

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

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

5. Tax reductions in favour of energy-intensive businesses defined in Article 17(1), point (a) of Council Directive 2003/96/EC shall be exempted from the notification requirement of Article 108(3) of the Treaty. Beneficiaries under such schemes that are large enterprises shall in addition:

(a) comply with the obligation to conduct an energy audit in the sense of Article 8 of Directive 2012/27/EU of the European Parliament and of the Council*, either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System, for example the EU eco-management and audit scheme (EMAS); and

(b) within [three years] from the moment the reduction is granted to it:

– implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments are proportionate; or alternatively

– invest a significant share of at least 50 % of the amount of the reductions in projects that lead to substantial reductions of the installation's greenhouse gas emissions. Where applicable, it should lead to reductions well below the relevant benchmark used for free allocation in the EU Emissions Trading System.

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

(32) the following Article 44a is inserted:

"*Article 44a*

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

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

2. The beneficiaries of the tax or levy reduction shall be the undertakings most affected by a higher tax or levy, which are not able to pass the increase in the production costs on to customers without significant sales reductions. The beneficiaries shall be selected on the basis of transparent, non-discriminatory and objective criteria.

3. The aid shall be granted in the same way to all undertakings active in the same sector of economic activity that are in a same or similar factual situation regarding the objectives of the reduction in the tax or levy. The gross grant equivalent of the aid shall not exceed 80 % of the nominal rate of the tax or levy.

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

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

"*Article 45*

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

1. Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity or the implementation of nature-based solutions for climate change adaptation and mitigation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The aid shall be granted for investments leading to one or several of the following results:

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

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

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

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

2a. This Article shall not apply to aid to make good the damage caused by earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin that is covered by Article 50 of this Regulation.

2b. Aid for rehabilitation following the closure of power plants and mining operations shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

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

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

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

5a. For investments in the protection or restoration of biodiversity and in the implementation of nature-based solutions for climate change adaptation and mitigation, the eligible costs shall be the total costs of the works resulting in the contribution to protecting or restoring biodiversity or in the implementation of nature-based solutions for climate change adaptation and mitigation.

6. The aid intensity shall not exceed:

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

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

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

Article 46

Investment aid for energy efficient district heating and cooling

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

1a. Aid shall only be granted for the construction or upgrade of district heating and cooling systems which are or are to become energy efficient. Where the system does not yet become energy efficient as a result of the supported works, the further upgrades required to reach the standard of energy efficiency shall commence within three years from the start of the supported works.

1b. Aid shall not be granted for the construction or upgrade of fossil fuel based generation facilities, except for natural gas. Aid for the construction or upgrade of natural gas based generation may be granted only where compliance with the 2030 and 2050 climate targets is ensured.

1c. Aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels may only be granted where all of the following conditions are met:

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

(b) the upgrade does not result in an increased generation of energy from fossil fuels except for natural gas;

(c) in case of an upgrade to the storage or network distributing heating and cooling generated from natural gas, compliance with the 2030 and 2050 climate targets is ensured.

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

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

4. The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, including green cogeneration.

5. As an alternative to paragraph 3, the aid intensity may reach up to 100 % of the funding gap, calculated as the difference between the positive and negative cash-flows over the lifetime of the investment and discounted to their current value using the cost of capital.

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

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

(34) Article 47 is amended as follows:

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

"*Article 47*

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

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

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

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

- a net reduction in the resources consumed in the production of a given quantity of output. The resources consumed shall include all material resources consumed, with the exception of energy, and the reduction shall be determined by measuring or estimating consumption before and after the implementation of the aid measure, taking into account any adjustment for external conditions that may affect resource consumption;
- the replacement of primary raw materials or feedstock with secondary (re-used or recycled) raw materials or feedstock;

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

(c) investments for the preparing for re-use sorting and recycling of other products, materials or substances generated by the beneficiary or by third parties and which would otherwise be unused, disposed of, or recovered in a less resource-efficient manner, or would lead to a lower quality of recycling;

(d) investments for the separate collection and sorting of waste or other products, materials or substances with a view to the preparing for re-use or recycling.

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

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

5. The investment shall not merely increase demand for the waste or other products, materials or substances intended to be re-used, recycled or recovered without increasing collection of those materials.

6. The investment shall go beyond economically profitable or established commercial practices that are generally applied throughout the Union and across technologies. From a technological perspective, the investment should lead to a higher degree of recyclability or to a higher quality of the recycled material as compared to normal practice.

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

(a) a comparable investment that would credibly be realised without aid and which does not achieve the same level of resource efficiency;

(b) treating the waste based on a treatment operation that is situated lower in the priority order of the waste hierarchy referred to in Article 4, point (1) of Directive 2008/98/EC or in a less resource-efficient way;

(c) the conventional production process relating to the primary raw material or product, if the re-used or recycled (secondary) product is technically and economically substitutable with the primary raw material or product.

Where the investment consists in an add-on investment to an already existing facility, for which there is no less environmentally-friendly equivalent, the eligible costs shall be the total investment costs.";

(b) in paragraph 8, the first sentence is replaced by the following:

8. The aid intensity shall not exceed 40 % of the eligible costs.";

(c) paragraph 10 is replaced by the following:

"10. Aid shall not be granted where the investment is undertaken to ensure compliance with applicable Union standards.";

(35) Article 48 is replaced by the following:

"*Article 48*

Investment aid for energy infrastructure

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

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

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

4. The eligible costs shall be the [total] investment costs.

5. The aid intensity may reach up to 100 % of the funding gap, calculated as the difference between the positive and negative cash-flows over the lifetime of the investment and discounted to their current value using the cost of capital.";

(36) Article 49 is replaced by the following:

"*Article 49*

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

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

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

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

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

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

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

(37) Article 56e is amended as follows:

(a) in paragraph 4, point (b), point (iv) is replaced by the following:

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

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

"(v) recharging or refuelling infrastructure that supplies vehicles with electricity or renewable or low-carbon hydrogen.";

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

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

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

"(b) Without prejudice to point (a) above, where the aid measure relates to the improvement of the energy efficiency of (i) residential buildings, (ii) buildings dedicated to the provision of education or social services or to justice, law-enforcement or fire-fighting and civil protection services, (iii) buildings dedicated to activities related to public administration, or (iv) buildings referred to in (i), (ii) or (iii) and in which activities other than those mentioned in (i), (ii) or (iii) occupy no more than 50 % of the internal floor area, aid may also be granted for measures that simultaneously improve the energy efficiency of those buildings and integrate any or all of the following investments:

(i) the installation of integrated on-site renewable energy installations generating electricity, heat or cold;

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

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

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

(v) investments in green roofs and equipment for the recovery of rain water.

The final beneficiary of the aid may be either building owner(s) or tenant(s), depending on who obtains the financing for the project;"

(e) in paragraph 10, point (a), points (i) and (ii) are replaced by the following:

"(i) unlisted SMEs that have not yet been operating in any market or have been operating for less than 10 years following their registration, unless they have taken over the activities of another enterprise or were formed through a merger, in which case the ten-year period also encompasses the operations of that enterprise or the merged companies. For eligible undertakings that are not subject to registration, the ten-year eligibility period is considered to start from the earlier of either the moment when the enterprise starts its economic activity or the moment when it becomes liable to tax with regard to its economic activity;

(ii) unlisted SMEs starting a new economic activity, where the initial investment shall be higher than 50 % of the average annual turnover in the preceding five years. Investments aimed at significantly improving the environmental performance of the activity beyond mandatory Union standards, or at starting a new environmentally friendly activity, shall be considered a new economic activity if their initial funding

requirements are above [30 %] of the average annual turnover in the preceding five years. The environmentally sustainable character of the investment shall be demonstrated in accordance with Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council, including the "do no significant harm" principle, or through other comparable methodologies;";

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

Article 2

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

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

Done at Brussels,

For the Commission
The President
[…]