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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)

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 aid¹, and in particular Article 1(1)(a) and (b) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Commission Regulation No 651/2014² determines certain categories of aid that are declared compatible with the internal market and exempted from the requirement to notify the Commission before they are granted. Regulation No 651/2014 provides that operational exemption criteria for port and airport infrastructure may be developed if sufficient case experience is acquired.
- (2) The Commission has now gained the necessary case experience. In order to simplify and clarify the State aid rules, to reduce the administrative burden and to allow the Commission to focus on the potentially most distortive cases, aid for port and airport infrastructure should be included in the scope of Regulation No 651/2014.
- (3) Investment aid to regional airports with an annual passenger traffic volume of up to three million passengers, can improve both the accessibility of certain regions and local development, depending on the specificities of each airport. In light of the Commission's experience, following the application of the Guidelines on State aid to airports and airlines³, investment aid to regional airports does not give rise to undue distortion of trade and competition, provided certain conditions are met. It should therefore be covered by the block exemption where it fulfils the conditions laid down in this Regulation. It is not appropriate to establish a notification threshold in terms of the amount of aid since the competitive impact of an aid measure depends mainly on the size of the airport and not on the size of the investment.

¹ OJ L 248, 24.9.2015, p. 1.

² Commission Regulation 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).

³ OJ C 99, 4.4.2014, p. 3.

- (4) Those conditions should aim at limiting competition distortions that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, the aid intensity should not exceed the maximum permissible aid intensity provided for in this Regulation, which varies according to the size of the airport, and the aid amount should not go beyond the funding gap of the investment. The compatibility conditions should ensure open and non-discriminatory access to the infrastructure. Aid should not be granted to airports located in the vicinity of an existing airport from which scheduled air services are operated, because aid to such airports entails a higher risk of distortion of competition and therefore ought to be notified to the Commission, unless granted to very small airports (up to 50000 passengers per annum), where significant distortion of competition are excluded because of the very small traffic.
- (5) Maritime ports are of strategic importance for achieving major Union objectives such as the smooth functioning of the internal market and the strengthening of economic, social and territorial cohesion, as set out, inter alia, in the Europe 2020 Strategy and in the Commission White Paper "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system"⁴. As highlighted in the Communication "Ports: an engine for growth"⁵, the Union needs ports which operate efficiently in all maritime regions, which requires efficient public and private investment. Investments are necessary, in particular, for the adaptation of port access infrastructure and port infrastructure and superstructure to the increased size and complexity of the fleet, to the use of alternative fuel infrastructure and to stricter requirements on environmental performance. The lack of high quality port infrastructure results in congestion and extra costs for shippers, transport operators and consumers.
- (6) The development of inland ports and their integration into multi-modal transport is a major objective of Union transport policy. Union legislation, such as Council Directive 92/106/EEC⁶, explicitly aims at reinforcing transport intermodality. The White Paper "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system" also encourages the shift towards more environmentally-friendly modes of transport such as rail and sea/inland waterway transport. In its Communication "Towards quality inland waterway transport NAIADES II", the Commission stated that "[t]he EU's inland waterway infrastructure is insufficiently interconnected and integrated with other modes of transport"⁷.
- (7) Conditions for exempting aid to ports should aim at limiting competition distortions that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, the aid should not exceed the maximum permissible aid intensity provided for in this Regulation, which for maritime ports varies according to the size of the investment project. The aid amount should not go beyond the difference between the eligible costs and the operating profit of the investment. Open and non-discriminatory access to the infrastructure should also be ensured.

⁴ COM(2011)144.

⁵ COM(2013)295.

⁶ Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for the combined transport of goods between the Member States (OJ L 368, 17.12.1992, p. 38).

⁷ COM(2013)623.

- (8) Investments included in the work plans of the Core Network Corridors set up by Regulation (EU) No 1315/2013 of the European Parliament and of the Council⁸ are projects of common interest with a particular strategic interest for the Union. Maritime ports that are part of those networks constitute the entry and exit points of goods being transported in and out of the Union. Investments aiming to improve the performance of those ports should benefit from a higher notification threshold.
- (9) [The Regulation of the European Parliament and the Council establishing a framework for the market access to port services and the financial transparency of ports has introduced transparent and separate accounts which enable the use of public funds by port managing bodies and port service providers to be easily identified. This financial transparency encourages an efficient use of public funds in ports and facilitates, whenever appropriate, the control of state aid. Moreover the Regulation introduces common and transparent procedures to award port service contracts and transparent and autonomous port infrastructure charging policy.]⁹
- (10) In light of the experience acquired following the application of Regulation No 651/2014, it is also appropriate to clarify or amend certain provisions that have proven difficult to apply. In particular as regards regional operating aid schemes for outermost regions, applying different rules for the compensation of additional transport costs and of other additional costs has proven difficult in practice and not appropriate to address the handicaps referred to in Article 349 of the Treaty and the provisions should be replaced by a method that applies to all additional costs. In view of the limited negative effects on competition of aid for culture and heritage conservation, the notification thresholds for aid in these areas should be increased.
- (11) Regulation (EU) No 651/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 1 is amended as follows:

– (a) In paragraph 1, points (k) to (l) are replaced by the following:

‘(k) aid for sports and multifunctional recreational infrastructure;

(l) aid for local infrastructures;

(m) aid for regional airports; and

(n) aid for ports.’

– (b) Paragraph 3 is replaced by the following:

‘This Regulation shall not apply to:

(a) aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council^{*} with the exception of training aid,

⁸ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

⁹ [The Regulation is currently under examination by the European Parliament and Council, and final adoption is expected by the end of 2016.]

aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, aid for disadvantaged workers and workers with disabilities and regional operating aid schemes in outermost regions and sparsely populated areas;

(b) aid granted in the primary agricultural production sector, with the exception of compensation for additional costs in outermost regions and sparsely populated areas, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and workers with disabilities;

(c) aid, other than regional operating aid in outermost regions and sparsely populated areas, granted in the sector of processing and marketing of agricultural products, in the following cases:

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

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

(d) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision No 2010/787;

(e) the categories of regional aid excluded in Article 13.

* Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1.)'

– (c) paragraph 4 (c) is replaced by the following:

'(c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters and regional operating aid schemes in outermost regions and in sparsely populated areas, provided those schemes do not treat undertakings in difficulty more favourably than other undertakings.'

(2) Article 2 is amended as follows:

– (a) point 42 is replaced by the following:

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

– (b) point 48 is replaced by the following:

'“(48) sparsely populated areas’ means NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 regions with less than 12.5 inhabitants per km²,

– (c) point 55 is replaced by the following:

'“(55) areas eligible for operating aid’ means an outermost region referred to in Article 349 of the Treaty or a sparsely populated area, as defined in point 48.'

– (d) the following point is inserted:

' (61a) 'Closure of the same or similar activity' means full closures and also partial closures resulting in substantial job losses. For the purpose of this provision substantial job losses are

defined as losses of at least 100 jobs in an establishment or as a job reduction in an establishment of at least 50% of the workforce;’

– (e) after point 143 the following points are added:

’Definitions for aid for regional airports

(144) ‘airport infrastructure’ means infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities, such as car parks, shops and restaurants;

(145) ‘airline’ means any airline with a valid operating licence issued by a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council*;

(146) ‘airport’ means an entity or group of entities performing the economic activity of providing airport services to airlines;

(147) ‘airport services’ means services provided to airlines by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure;

(148) ‘centralised ground handling infrastructure’ means infrastructure which is normally operated by the airport manager and put at the disposal of the various providers of ground handling services active at the airport in exchange for remuneration, excluding equipment owned or operated by the providers of ground handling services;

(149) ‘high-speed train’ means a train capable of reaching speeds of over 200 km/h;

(150) ‘ground handling services’ means services provided to airport users at airports as described in the Annex to Directive 96/67/EC**;

(151) ‘non-aeronautical activities’ means commercial services to airlines or other users of the airport, including ancillary services to passengers, freight forwarders or other service providers, renting out of offices and shops, car parking and hotels;

Definitions for aid for ports

(152) ‘Port’ means an area of land and water made up of infrastructure and equipment for, principally, the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods, or the embarkation and disembarkation of passengers and any other infrastructure necessary for transport operators within the port area;

(153) ‘Maritime port’ means a port for, principally, the reception of waterborne vessels by sea;

(154) ‘Inland port’ means a port other than a maritime port, with indirect access to the open sea through inland waterways;

(155) ‘Port infrastructure’ means infrastructure and facilities that generate a direct income for the port managing body including berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, and transport facilities within the port area;

(156) ‘Port superstructure’ means surface arrangements, buildings as well as mobile equipment (e.g. cranes) and fixed equipment that directly relate to the transport function of the port;

(157) ‘Access infrastructure’ means any type of infrastructure necessary to ensure the access and entry from land or sea and river by users to the maritime or inland port, in particular, access roads, access rail tracks, breakwaters, access channels, locks;

(158) ‘Dredging’ means the removal of sand, sediment or other substances from the bottom of the waterway access to a port in order to allow waterborne vessels to have access to the port;

(159) ‘Maintenance dredging’ means dredging routinely done in order to keep the waterway accessible;

* Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

** Council Directive 96/67 /EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p.36.) ’

(3) Article 4 is amended as follows:

– (a) paragraph 1 is amended as follows:

– (i) point (z) is replaced by the following:

‘(z) For investment aid for culture and heritage conservation: EUR [150] million per project; operating aid for culture and heritage conservation: EUR [75] million per undertaking per year.’

– (ii) the following points are added:

‘(dd) for investment aid for regional airports: the aid intensities laid down in Article 56a paragraphs 11 and 12;

(ee) for investment aid for maritime ports: EUR [100] million per single investment project (or EUR [120] million per single investment project in a maritime port included in the work plan of a core network corridor as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council*);

(ff) for investment aid for inland ports: EUR [20] million per single investment project.’

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

(4) In Article 5, paragraph 2, the following point is added:

‘(k) aid in the form of the sale or the lease of tangible assets below market rates if the value is established either by an independent expert evaluation prior to the sale or renting or by reference to a publicly available, regularly updated and generally accepted benchmark.’

(5) In Article 6, paragraph 5 is amended as follows:

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

‘(a) regional operating aid and regional urban development aid, if the relevant conditions laid down in Articles 15 and 16 are fulfilled; ’

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

‘ (d) aid compensating for the additional costs of employing workers with disabilities and aid for compensating the costs of assistance provided to disadvantaged workers, if the relevant conditions laid down in Articles 34 and 35 are fulfilled;’

(6) Article 7 is amended as follows:

– (a) In paragraph 1, a third sentence is added:

‘The amounts of eligible costs can be calculated in compliance with the simplified cost options set out in Articles 67 and 68 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council*, provided that the operation is at least partly financed through an EU fund that allows the use of these simplified cost options and that the category of costs is eligible according to the relevant exemption provision.’

– (b) In paragraph 3, the first sentence is replaced by the following:

‘Aid payable in the future, for example aid payable in several instalments, shall be discounted to its value at the moment it is granted.’

– (c) Paragraph 4 is deleted.

* Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 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).

(7) Article 12 is replaced by the following:

‘Article 12

Monitoring

1. In order to enable the Commission to monitor the aid exempted from notification by this Regulation, Member States, or alternatively, in the case of aid granted to European Territorial Cooperation projects, the Member State in which the Managing Authority is located, shall maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in this Regulation are fulfilled. Such records shall be kept for 10 years from the date on which the ad hoc aid was granted or the last aid was granted under the scheme.

2. In the case of schemes under which fiscal aid is granted automatically based on tax declarations of the beneficiaries, and where there is no ex ante control that all compatibility conditions are met for each beneficiary, Member States shall set up an appropriate control mechanism for a regular verification once per fiscal year, at least ex post and on a sample basis, that all compatibility conditions are met, and in order to draw the necessary conclusions. Member States shall maintain detailed records of the controls for at least 10 years from the date of the controls.

3. The Member State concerned shall provide the Commission within a period of 20 working days or such longer period as may be fixed in the request, with all the information and supporting documentation which the Commission considers necessary to monitor the application of this Regulation, including the information mentioned in paragraphs 1 and 2.’

(8) Article 13 is replaced by the following:

‘Article 13

Scope of regional aid

This Section shall not apply to:

(a) aid which favours activities in the steel sector, the coal sector, the shipbuilding sector or the synthetic fibres sector;

(b) aid to the transport sector as well as the related infrastructure and energy generation, distribution and infrastructure except for operating aid schemes in outermost regions and in sparsely populated areas;

(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, broadband infrastructures or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;

(d) individual regional investment aid to a beneficiary that, at the time of aid application, (i) has closed down the same or a similar activity in an establishment in the EEA in the preceding two years or,

(ii) has concrete plans to close down such an activity, within a period starting at the date of the aid application up to two years after the initial investment is completed.

This only applies to a closure which takes place in a different contracting party of the EEA than the one in which the aid will be granted.

(e) 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.’

(9) Article 14 is amended as follows:

– (a) In paragraph 6, the first sentence of the second subparagraph is replaced by the following:

‘In the case of acquisition of the assets of an establishment within the meaning of Article 2 point 49 or point 51, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration.’

– (b) In paragraph 7, the first sentence is replaced by the following:

‘For aid granted to large undertakings for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years.’

(10) Article 15 is replaced by the following:

‘Article 15

Regional operating aid

1. Regional operating aid schemes in outermost regions and sparsely populated areas shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be 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. In sparsely populated areas, the regional operating aid schemes shall compensate for the additional transport costs of goods which have been produced in areas eligible for operating

aid, as well as additional transport costs of goods that are further processed in those areas, under the following conditions:

- (a) the beneficiaries have their production activity in those areas;
- (b) the aid is objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit;
- (c) the additional transport costs are calculated on the basis of the journey of the goods inside the national border of the Member State concerned using the means of transport which results in the lowest costs for the beneficiary.

The aid intensity shall not exceed 100% of the additional transport costs as determined in this paragraph.

3. In outermost regions, the operating aid schemes shall compensate for the additional operating costs, incurred in outermost regions as a direct result of one or several of the permanent handicaps referred to in Article 349 of the Treaty, where the beneficiaries have their economic activity in an outermost region and subject to the following conditions:

(a) the annual aid amount per beneficiary under all operating aid schemes does not exceed one of the following percentages:

(i) for undertakings engaged in manufacturing activities:

- [...] of the gross value added annually created by the beneficiary in the outermost region concerned; or
- [...] % of the annual labour costs incurred by the beneficiary in the outermost region concerned; or
- [...] % of the annual turnover of the beneficiary realised in the outermost region concerned.

(ii) for undertakings engaged in other activities:

- [...] of the gross value added annually created by the beneficiary in the outermost region concerned; or
- [...] of the annual labour costs incurred by the beneficiary in the outermost region concerned; or
- [...] of the annual turnover of the beneficiary realised in the outermost region concerned.

(iii) The percentages set out in points (i) and (ii) may be increased by [...] percentage points] in outermost regions that are located more than 4000 km from the capital of the Member State concerned; or

(b) for undertakings with an annual turnover up to [EUR 300 000], as an alternative to the percentages set out in point (a), the annual aid amount per beneficiary undertaking under all operating aid schemes does not exceed [EUR 150 000].'

(11) In Article 21, the introductory phrase of paragraph 16 is replaced by the following:

'A risk finance measure providing guarantees or loans to eligible undertakings or providing quasi-equity investments structured as debt in eligible undertakings, shall fulfil the following conditions:'

(12) In Article 22, paragraph 2 is replaced by the following:

‘Eligible undertakings shall be unlisted small enterprises up to five years following their registration, provided that the newly registered small enterprise:

- (a) starts an activity that is new for this enterprise,
- (b) has not yet distributed profits, and
- (c) has not been formed through a merger.

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

(13) In Article 31, paragraph 3 (b) is replaced by the following:

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

(14) In Article 52, the following paragraph is inserted:

‘(2a) As an alternative to establishing the eligible costs as provided for in paragraph 2, the maximum amount of aid for a project can be established on the basis of the competitive selection process as required by paragraph 4.’

(15) Article 53 is amended as follows:

– (a) paragraph 2(a) is replaced by the following:

‘(a) museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;’

– (b) in paragraph 9, the first sentence is replaced by the following:

‘For the activities defined in paragraph 2(f), the maximum aid amount shall not exceed either the difference between the eligible costs and the project's discounted revenues or 70 % of the eligible costs.’

(16) In Article 54, the second subparagraph of paragraph 4 is replaced by the following:

‘In both cases, the maximum expenditure subject to territorial spending obligations shall in no case exceed 80 % of the overall production budget.

A Member States may also require a minimum level of production activity in the territory concerned for projects to be eligible for aid, but that level shall not exceed 50 % of the overall production budget.’

(17) The following sections are inserted after Article 56:

‘SECTION 14

Aid for regional airports

Article 56a

Investment aid for regional airports

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

2. The investment concerned shall have satisfactory medium-term prospects for use of the airport capacity on the basis of reasonable traffic forecasts.
3. The airport must be open to all potential users and must not be dedicated to one specific user. In the case of physical limitation of capacity, the allocation shall be done on the basis of pertinent, objective, transparent and non-discriminatory criteria.
4. The aid shall not be granted to an airport located within 100 kilometres distance or 60 minutes travelling time by car, bus, train or high-speed train from an existing airport from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council, are operated.
5. The aid shall not be granted to airports with average annual passenger traffic of more than three million passengers during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to cause the airport to increase its average annual passenger traffic above three million passengers within two financial years following the granting of the aid.
6. This Article shall not apply to airports with average annual freight traffic above 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. It shall also not apply if the aid is expected to lead the airport to increase its average annual freight traffic above 200 000 tonnes within two financial years following the granting of the aid.
7. Paragraph 4 shall not apply to airports with an annual passenger traffic of up to 50 000 passengers during the two financial years preceding the year in which aid is actually granted provided the aid is not expected to cause the airport to increase its average annual passenger traffic above 50 000 passengers.
8. The aid shall not be granted for the relocation of existing airports or for the creation of a new passenger airport (including the conversion of an existing airfield into a passenger airport).
9. The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
10. The eligible costs shall be the costs relating to the investments in airport infrastructure.
11. The aid amount shall not exceed:
 - (a) 50% of eligible costs for airports with an average annual passenger traffic of one to three million passengers during the two financial years preceding the year in which aid is granted;
 - (b) 75% of the eligible costs for airports with average annual passenger traffic of up to one million passengers during the two financial years preceding the year in which aid is granted.
12. The maximum aid intensities may be increased by 20 percentage points for airports located in remote regions.

SECTION 15

Aid for ports

Article 56b

Investment aid for maritime ports

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

2. The eligible costs shall be the costs, including planning costs, of investments:

- (a) for the construction or upgrade of maritime port infrastructures and superstructures, with the exception of mobile equipment; and
- (b) for the construction or upgrade of access infrastructure, including dredging and excluding maintenance dredging, dedicated to commercially exploited maritime port infrastructure.

Investment costs relating to non-transport related activities, including industrial production facilities active in the perimeter of the port, offices or shops, are ineligible.

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

4. The maximum aid intensity for the investments defined in paragraph 2 (a) shall not exceed:

- (a) if eligible costs are up to EUR [20] million: [100]% of the eligible costs;
- (b) if eligible costs are above EUR [20] million and up to EUR [50] million: [80]% of the eligible costs;
- (c) if eligible costs are above EUR [50] million and up to EUR [100] million: [50]% of the eligible costs;
- (d) if eligible costs are up to EUR [120] million for the maritime ports included in the work plan of a core network corridor as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council: [50]% of the eligible costs.

The maximum aid intensity for the investments defined in paragraph 2 (b) shall not exceed [100]% of the eligible costs;

5. The aid intensities laid down in paragraph 4 first subparagraph points (b), (c) and (d) may be increased by [10] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by [5] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

6. Any investment started by the same beneficiary within a period of [three] years from the date of the start of works on another aided investment in the same maritime port shall be considered to be part of a single investment project.

7. Any concession or other entrustment to a third party to construct, upgrade, operate or rent port infrastructure and superstructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the Union public procurement rules [and Regulation establishing a framework on market access to port services and financial transparency of ports¹⁰] where applicable. The duration of any concession or other entrustment for the rental or operation of the infrastructure to a third party shall not exceed a maximum duration of [30] years.

¹⁰ [The Regulation is currently under examination by the European Parliament and Council, and final adoption is expected by the end of 2016.]

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

Article 56c

Investment aid for inland ports

1. Investment aid for inland ports shall be compatible with the internal market within the meaning of Article 93 of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be the costs, including planning costs, of the investments:

- (a) for the construction or upgrade of inland port infrastructures and superstructures, with the exception of mobile equipment; and
- (b) for the construction or upgrade of access infrastructure, including dredging and excluding maintenance dredging, dedicated to commercially exploited inland port infrastructure.

Investment costs relating to non-transport related activities, including industrial production facilities active in the perimeter of the port, offices or shops, are ineligible.

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

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

5. Any investment started by the same beneficiary within a period of [three] years from the date of start of works on another aided investment in the same inland port shall be considered to be part of a single investment project.

6. Any concession or other entrustment to a third party to construct, upgrade, operate or rent port infrastructure and superstructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the procurement rules where applicable. The duration of any concession or other entrustment for the rental or operation of the infrastructure to a third party shall not exceed a maximum duration of [30] years.

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

(18) In Article 58, paragraph 1 is replaced by the following:

'1. This Regulation shall apply to individual aid granted before the respective provisions of this Regulation have entered into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9.'

Article 2

The Annexes to Regulation (EU) No 651/2014 are amended as follows:

(1) Annex II is replaced by...

[In Annex II (information sheet to be sent by the Member State), new entries will be created in part II for the new categories of aid (investment aid for airports, maritime ports and inland ports) and the entry on SME aid (Articles 17 to 20) will be split into different entries (per Article).]

(2) In Annex III, footnote 2 is replaced by the following:

‘2. 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).’

Article 3

This Regulation shall enter into force on the twentieth 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