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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) .../...

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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,

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 point (a) of Article 1(1) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Regulation (EU) No 651/2014 declares certain categories of aid compatible with the internal market.
- (2) Undertakings participating in European Territorial Cooperation ('ETC') projects covered by Regulation (EU) No 1299/2013 of the European Parliament and of the Council² or by [new ETC Regulation] often find difficulties in financing additional costs stemming from the cooperation between partners located in different regions and in different Member States or third countries. Given the importance of ETC for the cohesion policy, providing a framework for the implementation of joint actions and policy exchanges between national, regional and local actors from different Member States or third countries, certain difficulties faced by ETC projects in order to facilitate their compliance with State aid rules should be addressed. In the light of the Commission's experience, Regulation (EU) No 651/2014 should in particular apply to aid for ETC projects irrespective of the size of the beneficiary undertakings.
- (3) Given the limited effect on trade and competition of small amounts of aid granted to undertakings participating in ETC projects, simple rules for cases where the aggregate amount of aid per undertaking per project does not exceed a certain ceiling should be adopted.
- (4) Research and development projects awarded with a Seal of Excellence quality label following an evaluation and ranking carried out by independent experts, which are deemed excellent and worthy of receiving public funding but cannot be funded under the Horizon Framework Programme due to lack of available budget, may be supported by national resources including resources from the European Structural and

¹ OJ L 248, 24.9.2015, p. 1.

² 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).

Investment Funds for the 2014-2020 period, and from the European Regional Development Fund and the European Social Fund+ for the 2021-2027 period. As these projects are carried out by small and medium enterprises do not cover activities which are very close to the market and receive limited amounts of public funding, the national resources dedicated to their support should be considered compatible with the internal market and be exempted from the notification requirement under certain conditions. In addition, conditions already assessed at Union level prior to the awarding of the Seal of Excellence label should not be required to be assessed again. The profit or non-profit character of the entities carrying out the projects should not be relevant as regards the effect on competition in the internal market. Grants provided to researchers under the ERC Proof of Concept and under the Marie Skłodowska-Curie actions (MSCA) that qualify as economic activities should also be considered compatible with the internal market when they benefit from a Seal of Excellence quality label.

- (5) Combined public funding of national and Union centrally managed resources provided to research and development projects selected at Union level under the Horizon Framework Programme co-fund instrument, following transnational calls where at least three member States participate, can contribute to improving the European research and development competitiveness. As these projects are evaluated and selected by independent experts, meet objectives of common European interest and address well-defined market failures, the financial contributions made by Member States including resources from the European Structural and Investment Funds for the 2014-2020 period, and from the European Regional Development Fund and the European Social Fund+ for the 2021-2027 period, to the co-fund instrument should be considered compatible with the internal market and exempted from the notification requirement under certain conditions. In addition, conditions already assessed at co-fund instrument level prior to a project's selection should not be required to be assessed again.
- (6) The Horizon Framework Programme defines which research and innovation actions are eligible for funding. In situations where such actions may also be eligible for State aid for research and development, it is necessary to clarify to what extent actions eligible under the Horizon Framework Programme correspond to the categories of fundamental research, industrial research or experimental development as defined by this Regulation. For that purpose, the definitions regarding Technological Readiness Level (“TRL”) should be taken into account. TRL 1 corresponds to fundamental research, TRLs 2, 3 and 4 to industrial research, and TRLs 5, 6 and 8 to experimental development. On that basis, research and innovation actions under the Horizon Framework Programme should correspond to TRLs 1 to 4 and the category ‘innovation actions’, except for market replication, under the Horizon Framework Programme should correspond to TRLs 5 to 8.
- (7) Financial products supported by the InvestEU Fund may involve funds controlled by Member States, including EU shared management funds, in order to increase leverage and support additional investments in Europe. For instance, Member States have the possibility to contribute a part of Union shared management funds or their own funds to the Member States compartment of the EU guarantee under the InvestEU Fund. Moreover, Member States could finance the financial products backed by the InvestEU Fund through their own funds or national promotional banks. Such financing may qualify as ‘State resources’ and may be imputable to the State if the Member States have discretion as to the use of those resources. Conversely, when Member

States have no discretion as to the use of the resources, the use of those funds is not imputable to the State. In respect of such cases, the Commission intends to provide further guidance on the typical scenarios supported by InvestEU Fund.

- (8) Where national funds, including EU shared management funds, constitute State aid within the meaning of Article 107(1) of the Treaty, a set of conditions should be set out on which basis the aid should be considered compatible with the internal market and exempted from the notification requirement in order to facilitate the implementation of the InvestEU Fund.
- (9) The design of the InvestEU Fund by the Commission incorporates a number of important competition safeguards, such as supporting investments which deliver Union policy objectives and EU added value and the requirement for the InvestEU Fund to be additional and address market failures and sub-optimal investment situations. Moreover, the governance system and decision-making process will ensure before issuing the EU guarantee that the InvestEU supported operations meet the above requirements. Finally, the support provided by the InvestEU Fund will be transparent and its effects will be evaluated. Therefore State aid involved in the financial products supported by the InvestEU Fund should be considered compatible with the internal market and exempted from the notification requirement based on a limited set of conditions.
- (10) 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, the following points (o) and (p) are added:

“(o) aid for European Territorial Cooperation projects;

(p) aid involved in financial products supported by the InvestEU Fund.”;

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

“(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, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, aid for disadvantaged workers and workers with disabilities, regional investment aid in outermost regions, regional operating aid schemes, and aid to European Territorial Cooperation projects;

(b) aid granted in the primary agricultural production sector, with the exception of regional investment aid in outermost regions, regional operating aid schemes, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid, aid for disadvantaged workers and workers with disabilities, aid to European Territorial Cooperation projects and aid involved in financial products supported by the InvestEU Fund;”;

(c) paragraph 4 is replaced by the following:

“4. This Regulation shall not apply to:

(a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by certain natural disasters, aid schemes in accordance with Sections 2a and 16 of Chapter III;

(b) ad hoc aid in favour of an undertaking as referred to in point (a);

(c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters, start-up aid schemes, regional operating aid schemes, aid to SMEs under Article 56e and aid to financial intermediaries under Section 16 of Chapter III, provided those schemes do not treat undertakings in difficulty more favourably than other undertakings.

* 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)”;

(2) Article 2 is amended as follows:

(a) points 63, 64 and 65 are deleted;

(b) the following point (83a) is inserted:

“(83a) "Technology Readiness Level" means a measurement system addressing the entire research, development and innovation chain which uses the indicators 1 to 9 to provide a common understanding of the maturity level and technology status of particular technologies*;;”;

(c) points 84 , 85 and 86 are replaced by the following:

“(84) "fundamental research" means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view (corresponding to Technology Readiness Level 1);

(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 for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and for generic technology validation (corresponding to Technology Readiness Levels 2, 3 and 4);

(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. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services (corresponding to Technology Readiness Levels 5 to 8);

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the

final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

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

(d) the following point (86b) is inserted:

“(86b) "Digitalisation" means the adoption of technologies carried out by electronic devices and/or systems which allow to increase product functionality, develop online services, modernise processes, or migrate to business models based on the disintermediation of goods production and service delivery, eventually producing a transformative impact;”;

(e) the following point (138a) is inserted:

“(138a) “next generation backhaul networks (NGN)” mean advanced backhaul networks that can support the deployment of NGA networks through optical fibre (or equivalent technology);”;

(f) the following points (166) to (182) are added:

“Definitions for Aid involved in financial products supported by the InvestEU Fund

(166) "EU guarantee" as defined in the [InvestEU Programme] Regulation [reference], means a guarantee provided by the Union budget under which the budgetary guarantees in accordance with [Article 219(1) of the Financial Regulation] take effect through the signature of individual guarantee agreements with implementing partners;

(167) “InvestEU Fund” means a fund established by the [InvestEU Programme] Regulation [reference] providing for an EU guarantee supporting financing and investment operations implemented by the implementing partners;

(168) "financial product" as defined in the [InvestEU Programme] Regulation [reference], means a financial mechanism or arrangement under the terms of which the implementing partner provides direct or intermediated financing to final beneficiaries in any of the forms referred to in [Article 13 of the InvestEU Programme Regulation];

(169) “national promotional banks or institutions” as defined in the [InvestEU Programme] Regulation [reference], means legal entities carrying out financial activities on a professional basis which are given a mandate by a Member State or a Member States’ entity at central, regional or local level, to carry out development or promotional activities;

(170) "financial intermediary" means any financial institution regardless of its form and ownership, which may include, amongst others, banks, non-banking credit institutions, investment funds, micro-finance institutions, guarantee societies, leasing companies and national promotional banks or institutions;

(171) "commercial financial intermediary" means a financial intermediary which operates on a for profit basis and at full own risk, without a public guarantee, to the exclusion of national promotional banks or institutions;

(172) “implementing partner” as defined in the [InvestEU Programme] Regulation [reference], means the eligible counterpart such as a financial institution or other intermediary with whom the Commission signs a guarantee agreement;

(173) "market funds" means funds of commercial financial intermediaries and of other market investors, irrespective of their ownership, which operate on a for profit basis and at full own risk, without a public guarantee, and which are independent from the final beneficiaries. This

includes funds of business angels, of the EIB Group, of the EBRD and of other multilateral development banks, and excludes funds of national promotional banks or institutions;

(174) "white areas" means areas where no broadband infrastructure of the same category (either basic broadband or NGA/NGN network) is present or planned on commercial terms within three years according to appropriate mapping or the results of a public consultation;

(175) "grey areas" means areas where only one broadband infrastructure of the same category (in other words, basic broadband or NGA/NGN) is present or planned on commercial terms within three years according to appropriate mapping or the results of a public consultation;

(176) "black areas" means areas where at least two broadband infrastructures of the same category (in other words, basic broadband or NGA/NGN) are present or planned on commercial terms within three years according to appropriate mapping or the results of a public consultation;

(177) "step change" can be demonstrated if, as a result of the subsidised intervention, the selected project creates significant new investments in the broadband network and the subsidised infrastructure brings significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition compared to networks existing or planned within three years in the intervention area. A step change can be demonstrated when the following conditions are cumulatively demonstrated: the subsidised project ensures a doubling download and upload speeds compared to existing and/or planned infrastructure and at least symmetrical speeds above 300 Mbps, whichever is higher, and ensures significantly more pro-competitive outcomes compared to the current and/or planned infrastructure such as full open access conditions and more adequate and affordable services for end-consumers;

(178) "appropriate mapping" means mapping of an area, including the relevant target area, not older than [X] year, carried out by the competent national authorities, which includes all infrastructure of the same category (in other words, basic broadband, or NGA/NGN including very high capacity networks) existing or planned in the next three years, and is performed at premises level on the basis of premises passed (not premises connected);

(179) "public consultation" means a public consultation carried out by the competent national authorities through publication on an appropriate website available to any interested stakeholders for 1 month with the objective of gathering substantiated information from stakeholders regarding infrastructure investments of the same category existing or planned in the next three years in an area, including the relevant target area;

(180) "social services" means clearly identified services, meeting social needs as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing (which means housing for disadvantaged citizens or socially less advantaged groups who due to solvency constraints are unable to obtain housing at market conditions) and the care and social inclusion of vulnerable groups (as defined in recital 11 of Commission Decision 2012/21/EU);

(181) "TEN-T urban node" means an urban area where the transport infrastructure of the TEN-T network, such as ports including passenger terminals, airports, railway stations, logistic platforms and freight terminals located in and around an urban area, is connected with other parts of that infrastructure and with the infrastructure for regional and local traffic; as defined in point (p) of Article 3 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council*;

(182) "new entrant" means a railway undertaking as defined in Article 3(1) of Directive 2012/34/EU of the European Parliament and of the Council**, which fulfils the following conditions:

- (a) it received a licence pursuant to Article 17(3) of Directive 2012/34/EU less than ten years before the aid is granted;
- (b) it is not linked in the meaning of Article 3(3) of Annex I to a railway undertaking that received a license in any Member State prior to 1 January 2010;

(183) "innovative SME" means an SME whose R&D and innovation costs represent at least 15% of its total operating costs in at least one of the preceding 3 years or at least 10% of its total operating costs in each of the preceding 3 years. A special purpose vehicle which can be considered an "autonomous enterprise" as defined in Annex I, for which no historic data is available may be considered an innovative SME if its R&D and innovation costs included in a credible business plan meet one of the above criteria;

(184) "innovative mid-cap" means a large enterprise with up to 1500 employees which can be considered an "autonomous enterprise" as defined in Annex I, whose R&D and innovation costs represent at least 15% of its total operating costs in at least one of the preceding 3 years or at least 10% of its total operating costs in each of the preceding 3 years. A special purpose vehicle which can be considered an "autonomous enterprise" as defined in Annex I, for which no historic data is available, may be considered an innovative mid-cap if its R&D and innovation costs included in a credible business plan meet one of the above criteria;

(185) "small mid-cap" means a large enterprise with up to 499 employees and up to EUR 100 million annual turnover or EUR 86 million annual balance sheet which can be considered an autonomous enterprise as defined in Annex I.

* See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'A European strategy for Key Enabling Technologies - A bridge to growth and jobs, COM(2012) 341 final of 26.6.2012.

** 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).

*** Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).";

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

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

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

- (b) in point (i), the following points (vii) and (viii) are added:

“(vii) for aid for projects awarded a Seal of Excellence quality label the amounts defined in Article 25a,

(viii) for aid involved in co-fund projects and Teaming actions the thresholds defined in Article 25b;”

- (c) the following point (gg) is added:

“(gg) for aid involved in financial products supported by the InvestEU Fund: the amounts laid down in Section 16 of Chapter III.”;

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

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

(5) In Article 6 (5), the following points (i), (j) and (k) are added:

“(i) aid for undertakings participating in European Territorial Cooperation projects, if the relevant conditions in Articles 20 or 20a are fulfilled;

(j) aid for projects awarded a Seal of Excellence quality label and aid involved in co-fund projects and in Teaming actions, if the relevant conditions laid down in Articles 25a or 25b are fulfilled;

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

(6) In Article 7 (1), the second subparagraph is replaced by the following:

“The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council*, or [new CPR Regulation], 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.”

* 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 8 is amended as follows:

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

“(b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

Financing provided to the final beneficiaries under the support of the InvestEU Fund under Section 16 of Chapter III and the cost covered by it shall not be considered for determining compliance with the cumulation provisions of paragraph 3. This is achieved by first deducting the nominal amount of the financing supported by the InvestEU Fund from the total eligible project costs and subsequently calculating the highest aid intensity or aid amount applicable to the aid under this Regulation only on the basis of the total remaining eligible costs. The nominal amount of financing provided to the final beneficiaries under the support of the InvestEU Fund shall also not be considered for determining whether the notification threshold under this Regulation is respected.

Alternatively, for senior loans or guarantees on senior loans supported by the InvestEU Fund under Section 16 of Chapter III, the aid entailed in senior loans or guarantees on senior loans provided to the final beneficiaries can be calculated on the basis of the reference rate prevailing at the time of the granting of the aid and can be used for ensuring that cumulation with any other aid for the same identifiable eligible costs does not result in exceeding the

highest aid intensity or aid amount applicable to the aid or the notification threshold under this Regulation or another block exemption regulation or decision adopted by the Commission.”;

(b) paragraph 4 is replaced by the following:

“4. Aid without identifiable eligible costs exempted under Articles 20a, 21, 22, 23, and Section 16 of Chapter III may be cumulated with any other State aid with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with any other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by this or another block exemption regulation or decision adopted by the Commission.”;

(8) In Article 9, paragraphs 1 and 2 are 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 500 000, or, for beneficiaries active in primary agricultural production, each individual aid award exceeding EUR 60 000.

As regards aid granted to European Territorial Cooperation projects, 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 (EC) No 1299/2013 of the European Parliament and of the Council, or [Article 44 of new ETC Regulation], whichever is applicable, is located. Alternatively, the participating Member States may also decide that each of them shall provide the information relating to the aid measures within their territory on the respective websites.

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

0,06-05 (only for primary agricultural production);

0,5-1;

1-2;

2-5;

5-10;

10-30; and

30 and more.”;

* For schemes under Article 16 and 21 of the present Regulation, the requirement to publish information on each individual award exceeding EUR 500 000 can be waived with respect to SMEs which have not carried out any commercial sale in any market.

(9) In Article 11, the introductory sentence is replaced by the following:

“Member States, or in the case of aid granted to European Territorial Cooperation projects, alternatively the Member State in which the Managing Authority, as defined in Article 21 of

Regulation (EC) No 1299/2013, or [Article 44 of new ETC Regulation], whichever is applicable, is located, shall transmit to the Commission:”;

(10) In Article 14, paragraph 15 is replaced by the following:

“15. For an initial investment linked to European territorial cooperation projects covered by Regulation (EU) No 1299/2013, or [new ETC Regulation], 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 is 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 concerns a new economic activity.”;

(11) In Article 16, paragraph 4 is replaced by the following:

“4. The eligible costs shall be the overall costs of the urban development project to the extent that they comply with Articles 37 and 65 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council, or [new CPR], whichever is applicable.”

(12) After Article 19, the following title is inserted:

“Section 2a

Aid for European Territorial Cooperation”

(13) Article 20 is replaced by the following:

“Article 20

Aid for costs incurred by undertakings participating in European Territorial Cooperation project

1. Aid for costs incurred by undertakings participating in European Territorial Cooperation projects covered by Regulation (EC) No 1299/2013 of the European Parliament and of the Council or [new ETC Regulation] shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. To the extent that they are linked to the cooperation project, the following costs, which shall have the meaning ascribed to them in Commission Delegated Regulation (EU) No 481/2014*, or [Articles 38 to 43 of new ETC Regulation], whichever is applicable, shall be eligible costs:

- (a) staff costs;
- (b) office and administrative costs;
- (c) travel and accomodation costs;
- (d) external expertise and services costs;
- (e) equipment costs; and
- (f) costs for infrastructure and works.

3. The expertise and services referred to in point (d) of paragraph 2 shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services, or routine advertising.

4. The aid intensity shall not exceed 65% of the eligible costs. The aid intensity may be increased by 10 percentage points for aid granted to medium sized undertakings and by 15 percentage points for aid granted to small undertakings.

*Commission Delegated Regulation (EU) No 481/2014 of 4 March 2014 supplementing Regulation (EU) No 1299/2013 of the European Parliament and of the Council with regard to specific rules on eligibility of expenditure for cooperation programmes (OJ L 138, 13.5.2014, p. 45).”;

(14) The following Article 20a is inserted:

“Article 20a

Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects

1. Aid to undertakings for their participation in European Territorial Cooperation projects covered by Regulation (EC) No 1299/2013 of the European Parliament and of the Council or by [new ETC Regulation] shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. The total amount of aid under this Article granted to an undertaking per project shall not exceed EUR 20 000.”;

(15) In Article 25, paragraph 1 is replaced by the following:

“1. Aid for research and development projects, including projects having received a Seal of Excellence quality label under the Horizon 2020 SME-instrument or under the Horizon Europe programme, 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.”;

(16) The following Articles 25a and 25b are inserted:

“Article 25a

Aid for projects awarded a Seal of Excellence quality label

1. Aid for SMEs for research and development projects awarded a Seal of Excellence quality label under the Horizon 2020 or the Horizon Europe programme, 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 paragraphs 3 to 6 of this Article and in Chapter I are fulfilled.

2. Aid for Marie Skłodowska-Curie and ERC Proof of Concept actions awarded a Seal of Excellence quality label under the Horizon 2020 or the Horizon Europe programme 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 paragraphs 4 and 7 of this Article and in Chapter I are fulfilled.

3. The aided part of the project shall completely fall within one or more of the following categories:

- (a) fundamental research;
- (b) industrial research;

- (c) experimental development;
- (d) feasibility studies.

4. The categories, maximum amounts and methods of calculation of eligible costs shall be those defined under the Horizon 2020 SME-instrument or under the Horizon Europe programme.

5. The maximum aid intensities shall be the funding rates set out under the Horizon 2020 SME-instrument or under the Horizon Europe programme and shall not exceed 100% for fundamental research or industrial research and 70% for experimental development or feasibility studies.

6. The maximum aid amount for SMEs for research and development projects awarded a Seal of Excellence quality label under the Horizon 2020 or the Horizon Europe programme shall not exceed EUR 2.5 million per undertaking per project.

7. The maximum aid amount for Marie Skłodowska-Curie and ERC Proof of Concept actions awarded a Seal of Excellence quality label under the Horizon 2020 or the Horizon Europe programme shall not exceed the maximum level of support for such actions provided for in the Horizon 2020 or the Horizon Europe programme. The aid intensities shall not exceed 100%.

Article 25b

Aid involved in co-funded projects including Teaming actions

1. Aid provided to co-funded projects independently evaluated and selected following transnational calls under the Horizon Europe programme, including under Teaming actions independently evaluated and selected following transnational calls under Horizon 2020 or the Horizon Europe programme, 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 aided part of the project shall completely fall within one or more of the following categories:

- (a) fundamental research;
- (b) industrial research;
- (c) experimental development;
- (d) feasibility studies.

For projects under Teaming actions the aided part of the project may, in addition, contain project-related infrastructure investments.

3. The categories, maximum amounts and methods of calculation of eligible costs shall be those defined under the Horizon Europe programme. For Teaming actions, in addition, investments costs in project-related tangible and intangible assets shall be eligible.

4. The total public funding provided for a project shall not exceed 100% of the eligible costs for fundamental research and industrial research and 70% of the eligible costs for experimental development or feasibility studies. For projects under Teaming actions the aid for the project-related infrastructure investments shall not exceed 70% of the investment costs in tangible and intangible assets.

5. The funding provided by the Horizon Europe programme shall cover at least 30% of the eligible costs for experimental development and at least 35% of the eligible costs for fundamental research or industrial research.

6. For aid for infrastructures under Teaming actions the following additional conditions shall apply:

- (a) where the infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles;
 - (b) the price charged for the operation or use of the infrastructure shall correspond to a market price;
 - (c) 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;
 - (d) where the infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.”;
- (17) The following section is inserted after Article 56c:

“Section 16

Aid involved in financial products supported by the InvestEU Fund

Article 56d

Scope and common conditions

1. This Section shall apply to aid comprised in any of the following:

- (a) the EU guarantee from the Member State compartment of the InvestEU Fund;
- (b) financial products supported by the InvestEU Fund;
- (c) aid under points (a) and (b) passed on to financial intermediaries and final beneficiaries.

2. The aid 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 Chapter I, this Article as well as either Article 56e or Article 56f are fulfilled.

3. The aid shall comply with all applicable conditions laid down in the [InvestEU Fund] Regulation [reference] and the InvestEU Investment Guidelines [reference].

4. The maximum thresholds laid down in Articles 56e and 56f shall apply to the total outstanding financing provided to the final beneficiary under any financial product supported by the InvestEU Fund.

5. Aid shall not be granted in the form of refinancing of or guarantees on existing portfolios of financial intermediaries.

Conditions for aid involved in financial products supported by the InvestEU Fund

1. The financing provided to the final beneficiaries under the financial product supported by the InvestEU Fund shall fulfil one of the following requirements:

- (a) for loans with fixed interest rate, the interest rate shall be at least the generic mid-swap rate for the corresponding maturity and currency in which the loan is denominated. If this rate is not available, the interest rate shall be at least the interest rate of government bonds issued by the country which issues the currency in which the loan is denominated in;
- (b) for loans with floating interest rate, the interest rate shall be at least the EURIBOR or the corresponding IBOR rate for the corresponding maturity;
- (c) for guarantees, the guarantee fee shall be zero or greater;
- (d) for equity, the acquired equity stake shall correspond to the amount invested.

2. Aid to the final beneficiary must, in addition, comply with the conditions set out in one of the paragraphs 3 to 11.

3. Aid for broadband infrastructure shall comply with the following requirements:

- (a) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR [70] million;
- (b) in white areas, aid shall be granted only for projects that are:
 - (i) selected on the basis of a transparent and non-discriminatory selection process respecting technology neutrality, open to all users at fair, reasonable and appropriate conditions, including full and effective unbundling in line with Article 52(5) and (6); and
 - (ii) based on an identified need of investment, based on the consultation of available appropriate mapping or, when such mapping is not available, on a public consultation, to avoid a crowding out of private initiatives;
- (c) in grey areas, aid shall be granted only for projects that:
 - (i) represent a step change; and
 - (ii) are selected on the basis of a transparent and non-discriminatory selection process respecting technology neutrality, open to all users at fair, reasonable and appropriate conditions, including full and effective unbundling in line with Article 52(5) and (6); and
 - (iii) are based on an identified need of investment, based on consultation of available appropriate mapping or, when such mapping is not available, on a public consultation, to avoid a crowding out of private initiatives.
- (d) Projects targeting both white and grey areas, where the areas cannot be easily separated, shall comply with the conditions applicable to projects in grey areas.
- (e) Aid shall not be granted for projects including black NGA/NGN areas or including areas where at least one very high capacity network is present or planned within the next three years.

4. Aid for ports shall comply with the following requirements:

- (a) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR [100] million;
- (b) aid may only be provided for investments in access infrastructure and port infrastructure that are made available to interested users on an equal and non-discriminatory basis on market terms;
- (c) any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis;
- (d) aid shall not be granted for investments in port superstructures.

5. Aid for energy generation and energy infrastructure shall comply with the following requirements:

- (a) aid shall be granted for investments in energy infrastructure in gas and electricity that is subject to third party access, tariff regulation and unbundling in line with the internal energy market legislation for the following categories of projects:
 - (i) as regards energy storage, aid shall be granted only for projects included in the list of Projects of Common Interest [xxx, reference],
 - (ii) as regards energy infrastructure projects other than storage, aid shall be granted for: smart grids, projects which involve more than one Member State, projects included in the list of Projects of Common Interest, or projects in assisted areas.

The nominal amount of total financing provided to a final beneficiary per such project under the support of the InvestEU Fund shall not exceed EUR [100] million.

- (b) investment aid for generation of energy from renewable energy sources shall only be granted for new installations selected via a competitive bidding process based on clear, transparent and non-discriminatory criteria. The nominal amount of total financing provided for the final beneficiary per such project under the support of the InvestEU Fund shall not exceeding EUR [30] million.

6. Aid for social, educational and cultural infrastructure and activities shall comply with the following requirements:

- (a) the nominal amount of total financing provided to any final beneficiary under the support of the InvestEU Fund shall not exceed:
 - (i) EUR [100] million per project for investments in infrastructure used for the provision of social services, for education or for cultural purposes and activities set out in Article 53(2);
 - (ii) EUR [30] million for the provision of social services and cultural activities;
 - (iii) EUR [2] million for education and training.
- (b) Aid shall not be granted for training aimed at complying with mandatory national training requirements.

7. Aid for transport and transport infrastructures shall comply with the following requirements:

- (a) aid shall be provided only to the following projects:

- (i) projects of common interest as defined in point (a) of Article 3 of Regulation (EU) No 1315/2013 on the Trans-European transport (TEN-T) core network, except for projects concerning airport infrastructure;
 - (ii) connections to TEN-T urban nodes;
 - (iii) toll-free road infrastructure, as well as toll road infrastructure, where the operator has been selected on the basis of a competitive, transparent, non-discriminatory, and unconditional tender procedure, in line with the principles on public procurement enshrined in the Treaty;
 - (iv) rail network infrastructure;
 - (v) rolling stock for the provision of rail transport services on lines fully opened to competition, provided the beneficiary is a new entrant;
 - (vi) urban transport;
 - (vii) alternative fuel infrastructure or zero/low emission mobility infrastructure;
- (b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR [100] million.

8. Aid for other infrastructures shall comply with the following requirements:

- (a) aid shall be provided only to the following projects:
 - (i) water supply and waste water infrastructure;
 - (ii) waste management infrastructure, insofar as it is aimed at managing waste generated by other undertakings;
 - (iii) research infrastructure;
- (b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR [100] million.

9. Aid for climate and environmental protection shall comply with the following requirements:

- (a) aid shall only be granted for investments to go beyond Union standards for environmental protection, to increase the level of climate or environmental protection in the absence of applicable Union standards or for early adaptation to future Union standards;
- (b) the nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR [50] million.

10. Aid for research, development, innovation and digitalisation shall comply with the following requirements:

- (a) aid can be granted for:
 - (i) fundamental research;
 - (ii) industrial research;
 - (iii) experimental development; for large enterprises, except for small mid-caps in assisted areas and innovative mid-caps, aid for experimental development may only be granted if the project goes beyond the state of the art in its industry in the EEA and the financing provided to the final

beneficiary does not exceed the minimum necessary for the project to be sufficiently profitable;

- (iv) process or organisational innovation for SMEs
 - (v) digitalisation for SMEs;
- (b) for projects falling under points (i), (ii) and (iii) of point (a) of paragraph 10, the nominal amount of total financing provided for the final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR [50] million. For projects falling under points (iv) and (v) of paragraph 10(a) the nominal amount of total financing provided to the final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR [30] million.

11. SMEs, small or innovative mid-caps may receive financing supported by the InvestEU Fund provided that:

- (a) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR [30] million and is provided to:
- (i) microenterprises;
 - (ii) SMEs operating for less than 7 years following their first commercial sale;
 - (iii) SMEs entering a new product or geographical market, where the initial investment for entering into a new product or geographical market must be higher than 50% of the average annual turnover in the preceding 5 years;
 - (iv) innovative SMEs or innovative mid-caps;
 - (v) SMEs or small mid-caps in assisted areas provided that the financing is not used for relocation of activities;
 - (vi) SMEs for cultural purposes and activities set out in Article 53 (2);
- (b) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed:
- (i) EUR 1 million for 5-year loans;
 - (ii) EUR 500 000 for 10-year loans;
 - (iii) EUR 1.5 million for loan guarantees up to 5-years;
 - (iv) EUR 750 000 for loan guarantees up to 10-years;
 - (v) EUR 200 000 for equity.”.

Article 56f

Conditions for aid involved in commercially-driven financial products supported by the InvestEU Fund

1. Financing to the final beneficiaries shall be provided by commercial financial intermediaries which shall be selected in an open, transparent and non-discriminatory way based on objective criteria.

2. In each portfolio of financing provided to the final beneficiaries by the commercial financial intermediary the following conditions shall be complied with:

- (a) In case of a financing portfolio without risk tranches:

- (i) market funds shall account for at least 30% of the financing portfolio, ranking pari passu with other funds with regard to risk exposure; or
 - (ii) the commercial financial intermediary shall retain at least 20% of the risk exposure over the financing portfolio, ranking pari passu with other funds with regard to risk exposure.
- (b) In case of a financing portfolio with risk tranches:
- (i) one risk tranche not exceeding 25% of the financing portfolio may be entirely covered by other funds; and
 - (ii) in each remaining risk tranche, market funds shall account for at least 30%, ranking pari passu with other funds with regard to risk exposure and reward.

3. The nominal amount of total financing provided to each final beneficiary by the commercial financial intermediary shall not exceed EUR [6] million, or EUR [10] million if market funds account for at least 50% of each tranche in the financing portfolio.

Article 2

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 the Member States in accordance with the Treaties.

Done at Brussels,

For the Commission
The President
Jean-Claude JUNCKER