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

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Regulation (EU) No 651/2014² constitutes an important exemption from the general rule that Member States have to notify any plans to grant new aid to the Commission before implementing them, provided that certain pre-defined conditions have been fulfilled.
- (2) In view of the economic and financial consequences that the COVID-19 outbreak has had on undertakings and in order to ensure consistency with the general policy response adopted by the Commission, especially in the period 2020-2021, Regulation (EU) No 651/2014 should be amended accordingly. Beneficiaries of regional investment aid, which have to temporarily or permanently lay off staff due to the COVID-19 outbreak in the period 1 January 2020 to 30 June 2021, should not be considered to have breached the obligation to maintain those jobs in the area concerned for a period of five years from the date the post was first filled, or three years in the case of small and medium-sized enterprises (SMEs).
- (3) State aid granted to undertakings participating in European Innovation Partnership for agricultural productivity and sustainability ('EIP') Operational Group projects covered by Article 35 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council³ or by [new CAP SP Regulation], or in community-led local development ('CLLD') projects covered by Regulation (EU) No 1303/2013 of the European

¹ OJ L 248, 24.9.2015, p. 1.

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

³ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

Parliament and of the Council⁴ or by [new CPR Regulation] has little impact on competition, in particular, in view of the positive role the aid plays for sharing knowledge, especially for local and farming communities, as well as the often collective nature of the aid, and its relatively small scale. The nature of these projects is integrated, multi-actor and multi-sector, which can lead to certain difficulties for their classification under State aid law. Given the local nature of individual EIP Operational Group and CLLD projects, selected on the basis of a multi-annual local development strategy determined and implemented by public-private partnership and their orientation to community, social, environmental and climate interest, this Regulation should address certain difficulties faced by EIP Operational Group and CLLD projects in order to facilitate their compliance with State aid rules.

- (4) Given the limited effect on trade and competition of small amounts of aid granted to SMEs benefitting, directly or indirectly, from EIP Operational Group and CLLD projects, simple rules for cases where the aggregate amount of aid per undertaking per project does not exceed a certain ceiling should be laid down.
- (5) Undertakings participating in European Territorial Cooperation ('ETC') projects covered by Regulation (EU) No 1299/2013 of the European Parliament and of the Council⁵ or by [new ETC Regulation] often experience 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 should be addressed in order to facilitate their compliance with State aid rules. In the light of the Commission's experience, Regulation (EU) No 651/2014 should apply to aid for ETC projects, irrespective of the size of the beneficiary undertakings.
- (6) In addition, given the limited effect on trade and competition of small amounts of aid granted to undertakings participating in ETC projects, in particular, where those undertakings receive that aid indirectly, simple rules for cases where the aggregate amount of aid per undertaking per project does not exceed a certain ceiling should be laid down.
- (7) Research and development projects or feasibility studies awarded a Seal of Excellence quality label following an evaluation and ranking carried out by independent experts, which are regarded as 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 Investment Funds for the period 2014-2020, and from the European Regional Development Fund and the European Social Fund+ for the period 2021-2027. State aid granted to such research and development projects which are carried out by SMEs should be considered compatible with the internal market and be

⁴ 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 Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320-469).

⁵ 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).

exempted from the notification requirement under certain conditions. In addition, it should not be necessary to reassess eligibility conditions already assessed at Union level in accordance with the Horizon 2020 or Horizon Europe Framework programme rules prior to the awarding of the Seal of Excellence label. The profit or non-profit character of the entities carrying out the projects is not a relevant criterion under competition law.

- (8) State aid granted to support the deployment of certain performant fixed broadband networks and State aid granted to support the deployment of certain performant passive mobile networks should be considered compatible with the internal market and be exempted from the notification requirement under certain conditions.
- (9) State aid granted to certain projects of common interest in the area of digital connectivity infrastructures financed under the [CEF2 Regulation] or awarded a Seal of Excellence quality label under the Regulation (EU) No XX/2021 of the European Parliament and of the Council [CEF2 Regulation] should be considered compatible with the internal market and be exempted from the notification requirement under certain conditions.
- (10) Grants provided to researchers under the European Research Council ('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.
- (11) Combined public funding from national resources and resources directly managed by the Union for research and development projects (such as those implemented under a European institutionalised Partnership based on Article 185 or Article 187 of the Treaty or programme co-funded action as defined in the Horizon Europe Framework programme) can contribute to improving the European research and development competitiveness, as such research and development projects are considered to meet objectives of common European interest and address well-defined market failures. This is considered to be the case where such projects are evaluated, ranked and selected by independent experts in line with Horizon 2020 or Horizon Europe Framework Programme rules, following trans-national calls, where at least three Member States (two Member States in the case of Teaming actions), or alternatively two Member States and at least one associated country, participate. The financial contributions made by Member States, including resources from the European Structural and Investment Funds for the period 2014-2020, and from the European Regional Development Fund and the European Social Fund+ for the period 2021-2027, to those co-funded research and development projects should be considered compatible with the internal market and exempted from the notification requirement under certain conditions. In addition, it should not be necessary to reassess eligibility conditions already assessed at trans-national level in accordance with Horizon 2020 or Horizon Europe programme rules by independent experts prior to a research and development project's selection.
- (12) The Horizon 2020 and Horizon Europe Framework programmes define which research and innovation actions are eligible for funding. In this regard, research and innovation action, as defined under the Horizon Framework Programme, will normally correspond to fundamental research and industrial research activities, as defined in Regulation (EU) No 651/2014. Moreover, innovation action supported under the Horizon Framework Programme will normally correspond to the definition of experimental development activities under Regulation (EU) No 651/2014. The

simplifications as provided for in this Regulation in the area of research and development should, however, not be used to finance activities that are not eligible under State aid rules for research and development, that is to say, activities going beyond the scope of experimental development activities. To this effect, the definitions regarding Technological Readiness Level (“TRL”) may also be taken into account by the Member States. State aid for research and development activities at TRL 9 level is considered to go beyond the scope of the definition of experimental development and should consequently be excluded from the scope of Regulation (EU) No 651/2014.

- (13) Support for energy efficiency measures in certain buildings can be combined, under the InvestEU Fund and subject to simplified conditions, with support for the on-site production of renewable energy and its storage, for on-site charging points for vehicles and for the digitalisation of these buildings. This combined support under simplified conditions is possible for residential buildings, buildings dedicated to the provision of education or activities related to social services, buildings dedicated to activities related to public administration, and buildings in which economic activities occupy less than 35% of the internal floor area. Given the nature of the activities taking place in such buildings, support to improve the energy performance of such buildings has a more limited impact on competition. To ensure a consistent treatment of projects financed with the InvestEU Fund and with purely national resources, it is appropriate to amend the provisions of Regulation (EU) No 651/2014 concerning investment aid for energy efficiency measures and to introduce compatibility conditions for facilitating the combination under the same project of investments in energy efficiency measures with investments improving the energy performance of the building (i.e. integrated on-site installations generating renewable energy, on-site equipment for the charging of electric vehicles of the building’s users), and investments for the digitalisation of the building, in particular to increase its smart readiness. To that end, the entire investment cost of the energy efficiency measure and the various pieces of equipment should constitute the eligible costs while a uniform maximum aid intensity would apply.
- (14) To ensure a consistent treatment between projects financed with support of the InvestEU Fund and with purely national resources, it is appropriate to amend the provisions of Regulation (EU) No 651/2014 by introducing compatibility conditions for investment aid for certain types of low emission mobility infrastructure for road vehicles. Investment aid for publicly accessible recharging or refuelling infrastructure for zero- and low carbon emission road vehicles should be considered compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty in so far as it allows for an increased level of environmental protection and does not unduly distort competition. Therefore, only investment aid for recharging or refuelling infrastructure supplying zero- or low emission vehicles with renewable energy and renewable hydrogen should be covered by the block exemption, and certain safeguards should be in place to limit distortions of competition. The compatibility conditions should in particular ensure that support generates additional investments and addresses market failures or sub-optimal investment situations, that the development of the market is not hindered by support and in particular that there is open and non-discriminatory access to the infrastructure. In addition, investment aid for recharging or refuelling infrastructure should be granted on the basis of a competitive bidding process to ensure proportionality and minimise distortions on the infrastructure market. Finally, to stimulate effective competition, aid granted to the same beneficiary under each measure should be capped.

- (15) Financial products supported by the InvestEU Fund may involve funds controlled by Member States, including Union shared management funds, in order to increase leverage and support additional investments in the Union. For instance, Member States have the possibility to contribute a part of Union shared management funds to the Member State 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 or act in line with normal market conditions, the use of those funds may not constitute State aid.
- (16) Where national funds, including Union 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 the basis of which the aid could be considered compatible with the internal market and exempted from the notification requirement in order to facilitate the implementation of the InvestEU Fund.
- (17) The design of the InvestEU Fund incorporates a number of important competition safeguards, such as supporting investments which deliver Union policy objectives and Union 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.
- (18) 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 (m) and (n) are replaced by the following:

“(m) aid for regional airports;

(n) aid for ports;”;

(b) in paragraph 1, the following points (o) and (p) are added:

“(o) aid for European Territorial Cooperation projects; and

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

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

“(a) schemes under Sections 1 (with the exception of Article 15), 2, 3, 4, 7 (with the exception of Article 44) and 10 of Chapter III of this Regulation, and aid implemented in the form of financial products under Section 16 of that Chapter, if the average annual State aid budget per Member State exceeds EUR 150 million, from six months after their entry into force. For aid under Section 16 of Chapter III of this Regulation, only contributions by a Member State to

the Member State compartment of the EU guarantee, referred to in point (b) of Article 8(1) of the [InvestEU Programme] Regulation, which are earmarked for a specific financial product shall be taken into account for assessing whether the average annual State aid budget of that Member State related to the financial product exceeds EUR 150 million. The Commission may decide that this Regulation shall continue to apply for a longer period to any of these aid schemes after having assessed the relevant evaluation plan notified by the Member State to the Commission, within 20 working days from the scheme's entry into force. Where the Commission has already extended the application of this Regulation beyond the initial six months as regards such schemes, Member States may decide to extend those schemes until the end of the period of application of this Regulation, provided that the Member State concerned has submitted an evaluation report in line with the evaluation plan approved by the Commission. However, regional aid granted under this Regulation may be extended, by derogation, until the end of the period of validity of the relevant regional aid maps;"

(d) 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, aid for European Innovation Partnerships for agricultural productivity and sustainability (EIP) Operational Group projects, aid for community-led local development (‘CLLD’) projects, aid to European Territorial Cooperation projects, and aid involved in financial products supported by the InvestEU Fund, except for operations listed in Article 1(1) of Regulation (EU) No 717/2014(**);

(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 Innovation Partnerships for agricultural productivity and sustainability (EIP) Operational Group projects, aid to community-led local development (‘CLLD’) projects, aid to European Territorial Cooperation projects and aid involved in financial products supported by the InvestEU Fund;”;

(e) 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 and aid schemes in accordance with Article 19b, Section 2a as well as Section 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 schemes in accordance with Article 19b, aid to SMEs under Article 56f and aid to financial intermediaries under Articles 16, 21, 22 and 39 as well as Section 16 of Chapter III, provided undertakings in difficulty are not treated more favourably than other undertakings. However, this Regulation shall apply by derogation to undertakings which were

not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021.

* 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).

** Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.06.2014, p. 45).”;

(2) Article 2 is amended as follows:

- (a) points 63, 64 and 65 are deleted;
- (b) the following points (102a) to (102d) are added:

“(102a) “recharging infrastructure” means a fixed or mobile infrastructure allowing to supply road vehicles with renewable electricity;

(102b) “refuelling infrastructure” means a fixed or mobile infrastructure making it possible to supply road vehicles with renewable hydrogen;

(102c) “renewable electricity” means electricity generated from renewable energy sources;

(102d) “renewable hydrogen” means hydrogen produced through the electrolysis of water (in an electrolyser, powered by electricity stemming from renewable sources), or through the reforming of biogas or biochemical conversion of biomass, if in compliance with sustainability requirements;”;

- (c) the following point (103a) is added:

“(103a) “smart readiness” means the capability of buildings (or building units) to adapt their operation to the needs of the occupant, including optimizing energy efficiency and overall performance, and to adapt their operation in reaction to signals from the grid;”;

- (d) point 138 is replaced by the following:

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

- (a) they deliver services reliably at a very high speed per subscriber through optical (or equivalent technology) backhaul sufficiently close to user premises to guarantee the actual delivery of the very high speed;
- (b) they support a variety of advanced digital services including converged all-IP services; and
- (c) they have substantially higher upload speeds (compared to basic broadband networks).

At the current stage of market and technological development, NGA networks are: (a) fibre-based access networks (FTTx), (b) advanced upgraded cable networks and (c) certain advanced fixed wireless access networks capable of delivering reliable high- speeds per subscriber. Gigabit networks capable of providing symmetric download and upload speeds of at least 1Gbps are also considered NGA networks. References to NGA networks include next generation backhaul networks (NGN), where these are necessary for the NGA deployment;”;

- (a) 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;”;

(b) the following points (139a), (139b) and (139c) are added:

“(139a) “premises passed” means premises which can be connected within a short period of time at the normal activation fee for the end user, regardless of whether those premises are connected to the network. An operator may thus report premises as passed only if, following a request from an end user, it commits to connect the premises for normal activation fees, without any additional or exceptional cost if this is the standard commercial practice and, in any case, not exceeding the usual cost in the Member State concerned, which may be defined by the relevant authority. Furthermore, the operator must be able to connect and activate the service at the specific premises within 4 weeks from the date of the request;

(139b) “socio-economic drivers” means entities which by their mission, nature or location can directly or indirectly generate important socio-economic benefits to citizens, business and local communities located in their surrounding territory or in their area of influence, including public or private undertakings entrusted with the operation of services of general economic interest within the meaning of Article 106(2) of the Treaty in the areas of education, social services within the meaning of point (170) of this Article, public administration, transport, postal services or culture, as well as digitally intensive enterprises;

(139c) “5G corridor” means a transport path, road, railway or inland waterway, fully covered with digital connectivity infrastructure and, in particular 5G systems, enabling the uninterrupted provision of synergy digital services, such as connected and automated mobility, similar smart mobility services for railways or digital connectivity on inland waterways;”;

(c) the following heading and points (166) to (178) are added:

“Definitions for Aid involved in financial products supported by the InvestEU Fund (terms defined under other headings of this Article shall have the same meaning as laid down therein also for Aid involved in financial products supported by the InvestEU Fund)

(166) “InvestEU Fund”, “EU guarantee”, “financial product” “national promotional banks or institutions” and “implementing partner” have the meaning as defined in Article 2 of the [InvestEU Programme] Regulation;

(167) “financial intermediary” for the purposes of Section 16 means financial intermediaries within the meaning of point (34), with the exception of implementing partners;

(168) “commercial financial intermediary” means a financial intermediary which operates on a for profit basis and at full own risk, without a public guarantee, national promotional banks or institutions are not considered to be commercial financial intermediaries;

(169) “projects of common interest in the area of digital connectivity infrastructures” means projects of common interest in the area of digital connectivity infrastructures within the meaning of Article 8 of Regulation [CEF2 Regulation];

(170) “social services” means clearly identified services, meeting social needs, in particular 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 explained in recital 11 of Commission Decision 2012/21/EU* or subsequent legal acts replacing said decision);

(171) “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**;

(172) “new entrant” means a railway undertaking within the meaning of 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 within the meaning of Article 3(3) of Annex I to this Regulation to a railway undertaking that received a license within the meaning of Article 3(14) of Directive 2012/34/EU prior to 1 January 2010;

(173) “urban transport” means transport within a city or an agglomeration and its commuting zones;

(174) “ecosystem”, “biodiversity” and “the good condition of an ecosystem” have the meaning as defined in Article 2(1) of the [(draft) Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment];

(175) “residential building” means a building constituted of single-family or multi-family dwellings;

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

(178) “digitalisation” means the adoption of technologies carried out by electronic devices and/or systems which make it possible 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;

* Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

** 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) to (x) are added:

“(vii) for aid for SMEs for research and development projects awarded a Seal of Excellence quality label and implemented under Article 25a, the amount referred to in Article 25a;

(viii) for aid Marie Curie Skłodowska actions and ERC Proof of Concept actions implemented under Article 25b, the amounts referred to in Article 25b;

(ix) for aid involved in co-funded research and development projects implemented under Article 25c, the amounts referred to in Article 25c;

(x) for aid for teaming actions, the amounts referred to in Article 25d;”;

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

“(s) for investment aid for environmental protection, excluding investment aid for the remediation of contaminated sites and aid for the distribution network part of the energy efficient district heating and cooling installation: EUR 15 million per undertaking per investment project; EUR 30 million for aid for energy efficiency investments in buildings as laid down in Article 38(3a); and EUR 30 million of total nominal outstanding financing for aid for energy efficiency investments in buildings as laid down in Article 38(7);”;

(d) the following point (s a) is added after point (s):

“(s a) for publicly accessible charging and/or refuelling infrastructure for zero or low carbon emission vehicles: EUR [15] million per undertaking per project and, in the case of schemes, an average annual State aid budget of up to EUR [150] million;”;

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

“(t) for investment aid for energy efficiency projects, the amounts referred to in Article 39(5);”;

(f) point (y) is replaced by the following:

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

(g) the following points (y a) and (y b) are added:

“(y a) for aid for 4G or 5G mobile networks awarded in the form of a grant: EUR 70 million total costs per project; for aid for 4G or 5G mobile networks awarded in the form of a financial instrument the nominal amount of total financing provided to any final beneficiary per project must not exceed EUR 100 million;

“(y b) for aid for certain projects of common interest in the area of digital connectivity infrastructures financed under the [CEF2 Regulation] or awarded a Seal of Excellence quality label under the [CEF2 Regulation] awarded in the form of a grant: EUR 100 million total costs per project; for aid for certain projects of common interest in the area of digital connectivity infrastructures awarded in the form of a financial instrument the nominal amount of total financing provided to any final beneficiary per project must not exceed EUR 150 million;”;

(h) the following points (gg) and (hh) are added:

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

(hh) for aid to SMEs for costs incurred by participating in community-led local development (‘CLLD’) projects and European Innovation Partnership for agricultural productivity and

sustainability ('EIP') Operational Group projects: for aid under Article 19a, EUR 2 million per undertaking, per project; for aid under Article 19b, the amounts laid down in Article 19b(2) per project.”;

(4) 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), (k) and (l) are added:

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

(j) aid for research and development projects awarded a Seal of Excellence quality label, Marie Skłodowska-Curie actions and ERC Proof of Concept actions awarded a Seal of Excellence quality label, aid involved in co-funded projects and in co-funded Teaming actions, if the relevant conditions laid down in Article 25a, Article 25b, Article 25c or Article 25d 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;

(l) aid for SMEs participating in or benefitting from community-led local development ('CLLD') projects and European Innovation Partnership for agricultural productivity and sustainability ('EIP') Operational Group projects, if the relevant conditions in Article 19a or Article 19b are fulfilled”;

(6) in Article 7(1), the second sentence 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] or [new CAP SP 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 with the support from the InvestEU Fund covered by Section 16 of Chapter III and the cost covered by this financing shall not be considered for determining compliance with the cumulation provisions laid down in the first sentence of this point. Instead, the amount relevant for determining compliance with the cumulation provisions of the first sentence of this point shall be calculated as follows. first, the nominal amount of the financing supported by the InvestEU Fund shall be deducted from

the total eligible project costs, obtaining the total remaining eligible costs; second, the maximum aid shall be calculated by applying the relevant highest aid intensity or aid amount only to the total remaining eligible costs.

In cases of Articles for which the notification threshold is expressed as a maximum aid amount, the nominal amount of financing provided to the final beneficiaries with the support from the InvestEU Fund shall also not be considered for determining whether the notification thresholds in Article 4 are respected.

Alternatively, for senior loans or guarantees on senior loans supported by the InvestEU Fund under Section 16 of Chapter III, the gross grant equivalent of the aid entailed in such loans or guarantees provided to the final beneficiaries may be calculated on the basis of the reference rate prevailing at the time of the granting of the aid. This gross grant equivalent of the aid can be used for ensuring, in line with the first sentence of this point, 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 under this Regulation or the relevant notification threshold under this Regulation.”;

(b) paragraph 4 is replaced by the following:

“4. Aid without identifiable eligible costs exempted under Articles 19b, 20a, 21, 22, 23, 56e(5)(a)(ii), 56e(5)(a)(iii), 56e(8)(d), 56e(10) and 56f may be cumulated with any other State aid with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with any other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by this or another block exemption regulation or decision adopted by the Commission. Aid without identifiable eligible costs exempted under 56e(5)(a)(ii), 56e(5)(a)(iii), 56e(8)(d), 56e(10) and 56f may be cumulated with aid without identifiable eligible costs exempted under the same articles.”;

(8) Article 9 is amended as follows:

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

“1. The Member State concerned shall ensure the publication 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, other than those to which Section 2a applies, each individual aid award for such production exceeding EUR 60 000 and for beneficiaries active in the fishery and aquaculture sector, other than those to which Section 2a applies, each individual aid award exceeding EUR 30 000.

As regards aid granted to European Territorial Cooperation projects referred to in Article 20, the information referred to in this paragraph shall be placed on the website of the Member State in which the Managing Authority concerned, as defined in Article 21 of Regulation (EU) No 1299/2013 of the European Parliament and of the Council, or [Article 44 of new ETC Regulation], whichever is applicable, is located. Alternatively, the participating Member States may decide that each of them shall provide the information relating to the aid measures within their territory on the respective websites. The publication obligations laid down in this paragraph shall not apply to aid granted to European Territorial Cooperation projects referred

to in Article 20a, as well as European Innovation Partnership for agricultural productivity and sustainability ('EIP') Operational Group projects and community-led local development ('CLLD') projects under Article 19b,.

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):

0,06-0,5 (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.”;

(b) the following paragraph 3a is inserted:

“3a. If the financial product has been implemented by a Member State under the InvestEU Member State compartment or by a national promotional bank acting as an implementing partner or acting as a financial intermediary under InvestEU, the Member State remains under the obligation to ensure the publication of information as laid down in paragraph 1(c) of this Article. However, this obligation is deemed to be fulfilled if the implementing partner provides the information as laid down in paragraph 1(c) within the period stipulated in Article 38(5) of Regulation 2018/1046* to the Commission, in accordance with the relevant reporting requirements laid down in the guarantee agreement signed between the Commission and the implementing partner, if the guarantee agreement specifies that the financial intermediaries collect a legal company identifier for each aid recipient.

* Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (1) OJ-L 193/30.07.2018, p.1.”;

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

“1. Member States, or in the case of aid granted to European Territorial Cooperation projects under Article 20, alternatively the Member State in which the Managing Authority, as defined in Article 21 of Regulation (EU) No 1299/2013, or [Article 44 of new ETC Regulation], whichever is applicable, is located, shall transmit to the Commission:

(a) via the Commission's electronic notification system, the summary information about each aid measure exempted under this Regulation in the standardised format laid down in Annex II, together with a link providing access to the full text of the aid measure, including its amendments, within 20 working days following its entry into force;

(b) an annual report, as referred to in Commission Regulation (EC) No 794/2004* in electronic form, on the application of this Regulation, containing the information

indicated in that Regulation, in respect of each whole year or each part of the year during which this Regulation applies.

This Article shall not apply in respect of aid granted to European Territorial Cooperation projects referred to in Article 20a, as well as to European Innovation Partnership for agricultural productivity and sustainability ('EIP') Operational Group projects and to community-led local development ('CLLD') projects as referred to Article 19b. If the financial product has been implemented by a Member State under the InvestEU Member State compartment or by a national promotional bank acting as an implementing partner or acting as a financial intermediary under InvestEU, the Member State remains under the obligation to comply with subparagraph (b) of this Article. However, this obligation is deemed to be fulfilled if the implementing partner provides the annual reports as defined in subparagraph (b) to the Commission, in accordance with the relevant reporting requirements laid down in the guarantee agreement signed between the Commission and the implementing partner .

* Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).”;

(10) in Article 12, paragraph 1 is replaced by the following:

“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 referred to in Article 20, 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. This Article shall not apply in respect of aid granted to European Territorial Cooperation projects referred to in Article 20a, as well as to European Innovation Partnership for agricultural productivity and sustainability Operational Group projects and to community-led local development ('CLLD') projects as referred to Article 19b.”;

(11) Article 14 is amended as follows:

(a) in paragraph 9, point (c) is replaced by the following:

“(c) each job created through the investment shall be maintained in the area concerned for a period of at least five years from the date the post was first filled, or three years in the case of SMEs, except if the job is lost between 1 January 2020 and 30 June 2021.”;

(b) 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.”;

(12) 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, or [new CPR], whichever is applicable.”;

(13) the following Article 19a is inserted:

“Article 19a

Aid for costs incurred by SMEs participating in community-led local development (‘CLLD’) or European Innovation Partnership for agricultural productivity and sustainability (‘EIP’) Operational Group projects

1. Aid for costs incurred by SMEs participating in CLLD projects, designated as LEADER local development under EAFRD, covered by Regulation (EU) No 1303/2013 or [new CPR Regulation], as well as for EIP Operational Group projects covered by Article 35 of Regulation (EU) No 1305/2013 or [Article 71 of new CAP SP 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 following costs set out in Article 35(1) of Regulation (EU) No 1303/2013 [Article 28(1) new CPR] shall be eligible for CLLD and EIP Operational Group projects:

- (a) the costs of preparatory support, capacity building, training and networking with a view of preparing and implementing a CLLD strategy or an EIP Operational Group project;
- (b) implementation of approved operations;
- (c) preparation and implementation of the group’s cooperation activities;
- (d) running costs linked to the management of the implementation of the CLLD strategy or of the EIP Operational project;
- (e) animation of the EIP community or the CLLD strategy in order to facilitate exchange between stakeholders to provide information and to promote the strategy and the projects, and to support potential beneficiaries with a view of developing operations and preparing applications.

3. The aid intensity shall not exceed the maximum co-financing rates provided for in the Fund specific Regulations supporting CLLD and EIP Operational Groups.”;

(14) the following Article 19b is inserted:

“Article 19b

Limited amounts of aid to SMEs benefitting from community-led local development (‘CLLD’) or European Innovation Partnership for agricultural productivity and sustainability (‘EIP’) Operational Group projects

1. Aid to undertakings participating in, or benefitting from, CLLD or EIP Operational Group projects, as referred to in Article 19a paragraph 1, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. The total amount of aid under this Article granted per project shall not exceed EUR [50 000] for CLLD projects, and EUR [200 000] for EIP Operational Group projects.”;

(15) after Article 19, the following title is inserted:

“Section 2a

Aid for European Territorial Cooperation”

(16) 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 (EU) No 1299/2013 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 accommodation costs;
- (d) external expertise and services costs;
- (e) equipment costs; and
- (f) costs for infrastructure and works.

3. The aid intensity shall not exceed the maximum co-financing rate provided for in Regulation (EU) No 1303/2013 of the European Parliament and of the Council or [new CPR Regulation and/or new ETC Regulation], whichever is applicable.

* 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).”;

(17) 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 (EU) No 1299/2013 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.”;

(18) in Article 25, paragraph 1 is replaced by the following:

“1. Aid for research and development projects, including research and development projects having received a Seal of Excellence quality label under the Horizon 2020 or under the Horizon Europe programme and co-funded research and development projects and, where

applicable, aid for co-funded Teaming actions, 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.”;

(19) the following Articles 25a to 25d are inserted:

“Article 25a

Aid for projects awarded a Seal of Excellence quality label

1. Aid for SMEs for research and development projects as well as feasibility studies 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 this Article and in Chapter I are fulfilled.
2. The eligible activities of the aided research and development project or feasibility study shall be those defined as eligible under the Horizon 2020 or the Horizon Europe programme rules, excluding activities going beyond experimental development activities.
3. The categories, maximum amounts and methods of calculation of eligible costs of the aided research and development project or feasibility study shall be those defined as eligible under the Horizon 2020 or Horizon Europe programme rules.
4. The maximum aid amount shall not exceed EUR 2.5 million per SME per research and development project or feasibility study.
5. The total public funding provided for each research and development project or feasibility study shall not exceed the funding rate set out for that research and development project or feasibility study under the Horizon 2020 or under the Horizon Europe programme rules.

Article 25b

Aid for Marie Skłodowska-Curie actions and ERC Proof of Concept actions

1. Aid for Marie Skłodowska-Curie actions 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 this Article and in Chapter I are fulfilled.
2. The eligible activities of the aided action shall be those defined as eligible under the Horizon 2020 or the Horizon Europe programme rules.
3. The categories, maximum amounts and methods of calculation of eligible costs of the aided action shall be those defined as eligible under the Horizon 2020 or Horizon Europe programme rules.
4. The total public funding provided for each aided action shall not exceed the maximum level of support provided for in the Horizon 2020 or the Horizon Europe programme.

Article 25c

Aid involved in co-funded research and development projects

1. Aid provided to a co-funded research and development project or a feasibility study (including research and development projects implemented under a European institutionalised Partnership based on Article 185 or Article 187 of the Treaty or a programme co-fund action, as defined in the Horizon Europe programme rules) which is implemented by at least three

Member States, or alternatively two Member States and at least one associated country, and evaluated, ranked and selected by independent experts following trans-national calls in line with the Horizon 2020 or Horizon Europe programme rules, 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 eligible activities of the aided research and development project or feasibility study shall be those defined as eligible under the Horizon 2020 or the Horizon Europe programme rules, excluding activities going beyond experimental development activities.

3. The categories, maximum amounts and methods of calculation of eligible costs shall be those defined as eligible under the Horizon 2020 or the Horizon Europe programme rules.

4. The total public funding provided shall not exceed the funding rate established for the research and development project or feasibility study following the selection, ranking and evaluation under the Horizon 2020 or Horizon Europe programme rules.

5. The funding provided by the Horizon 2020 or Horizon Europe programme shall cover at least 30% of the total eligible costs of a research and innovation action or an innovation action as defined under the Horizon 2020 or Horizon Europe programme.

Article 25d

Aid for Teaming actions

1. Aid provided to co-funded Teaming actions, involving at least two Member States and evaluated, ranked and selected by independent experts following transnational calls under the Horizon 2020 or the Horizon Europe programme rules, 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 eligible activities of the co-funded Teaming action shall be those defined as eligible under the Horizon 2020 or Horizon Europe programme rules. Activities going beyond experimental development activities are excluded.

3. The categories, maximum amounts and methods of calculation of eligible costs shall be those defined as eligible under the Horizon 2020 or the Horizon Europe programme rules. In addition, investment costs in project-related tangible and intangible assets shall be eligible.

4. The total public funding provided shall not exceed the funding rate established for the Teaming action following the selection, ranking and evaluation under the Horizon 2020 or the Horizon Europe programme rules. In addition, for investments in project related tangible and intangible assets the aid shall not exceed 70% of the investment costs.

5. For investment aid for infrastructures under a Teaming action 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.”;
- (20) the following Article 36a is inserted:

“Article 36a

Investment aid for publicly accessible recharging and/or refuelling infrastructure for zero and low emission road vehicles

1. Aid for the deployment of recharging or refuelling infrastructure for zero and low emission road vehicles shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. This Article shall only cover aid granted for the deployment of recharging or refuelling infrastructures that supply vehicles with renewable electricity or renewable hydrogen, which serve at least partially as a substitute for fossil fuel sources in the energy supply to transport.
3. The eligible costs shall be the costs for the construction and installation of the recharging or refuelling infrastructure. These may include, for example, the cost of the recharging or refuelling infrastructure itself, installation of or upgrades to any electrical or other power components, including the transformer, that are required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, technical equipment, civil engineering works, land or road adaptations, installation costs and costs for related and necessary permits. The costs for the local production or storage unit generating or storing the electric power, as well as the costs for the local production unit generating the hydrogen are excluded.
4. The aid shall be granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. The aid intensity shall not exceed [50]% of the eligible costs. Aid granted to any one beneficiary shall in no case exceed [25]% of the overall aid budget of the scheme concerned.
5. Aid under this Article shall only be granted for the construction and installation of recharging or refuelling infrastructure accessible to the public and providing Union-wide non-discriminatory access to users. Union-wide non-discriminatory access to users shall not allow the different treatment of users, including in relation to tariffs, authentication and payment methods and other terms and conditions of use.
6. The investment shall be located in areas where there is a need for recharging or refuelling infrastructure of the same category (for example, for recharging infrastructure: normal or high power) and where no such infrastructure is likely to be developed on commercial terms within three years from the moment of publication of the planned aid measure, which shall be verified through an ex ante open public consultation or an independent study.

7. By way of derogation from paragraph 6, the need for aid for recharging or refuelling infrastructure can be presumed where pure electric and plug-in hybrid vehicles or hydrogen vehicles represent respectively less than [1]% of the total fleet of vehicles of the same category in the respective Member State. For the purpose of this paragraph, passenger cars and light commercial vehicles shall be considered as being part of the same category of vehicles.

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

(21) Article 38 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

- (a) where the costs of investing in energy efficiency can be identified in the total investment cost as a separate investment, this energy efficiency-related cost shall constitute the eligible costs;
- (b) where the investment relates to the improvement of the energy efficiency of i) residential buildings, ii) buildings dedicated to the provision of education or activities related to social services, iii) buildings dedicated to activities related to public administration, or iv) buildings referred to in i), ii) or iii) and in which activities other than those mentioned in i), ii) or iii) occupy less than 35% of the internal floor area, the entire investment costs necessary to achieve a higher level of energy efficiency shall constitute the eligible costs;
- (c) in all other cases, the costs of investing in energy efficiency shall be identified by reference to a similar, less energy efficient investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitutes the eligible costs.

The costs not directly linked to the achievement of a higher level of energy efficiency shall not be eligible.”;

(b) the following paragraph 3a is inserted:

“3a. For the buildings referred to in paragraph 3(b), the investment in improving the energy efficiency of the building may be combined with investments in any or all of the following:

- (a) integrated on-site renewable energy installations generating electricity and/or heat;
- (b) equipment for the storage of the energy generated by the on-site renewable energy installation;
- (c) Equipment **and related infrastructure** incorporated in the building for the recharging of electric vehicles of the building’s users;
- (d) investments for the digitalisation of the building, in particular to increase its smart readiness. Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and, if necessary, the ancillary part of the passive network on the private property outside the building. Wiring or cabling for data networks outside the private property is excluded.

In case of such combined works, the entire investment cost of the various pieces of equipment shall constitute the eligible costs.

The final beneficiary of the aid may be either the building owner(s) or tenant(s), depending on who obtains the grant for the energy efficiency works.”;

(c) the following paragraph 7 is added:

“7. Aid for measures that improve the energy efficiency of buildings may also relate to the facilitation of energy performance contracts subject to the following cumulative conditions:

- (a) the support takes the form of a loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consists in a financial product aimed to refinance the respective provider (e.g. factoring, forfeiting);
- (b) the nominal amount of total outstanding financing provided under this paragraph per beneficiary does not exceed EUR [30] million;
- (c) the support is provided to SMEs or small mid-caps;
- (d) the support is provided for energy performance contracting within the meaning of Article 2(27) of Directive 2012/27/EU on energy efficiency; and
- (e) the energy performance contracting relates to a building referred to in paragraph 3a.”;

(22) Article 39 is amended as follows:

(a) the title of Article 39 is replaced by the following:

“Article 39

Investment aid for energy efficiency projects in buildings in the form of financial instruments”;

(b) the following paragraph 2a is inserted:

“2a. Where the investment relates to the improvement of the energy efficiency of i) residential buildings, ii) buildings dedicated to the provision of education or activities related to social services, iii) buildings dedicated to public administration, or iv) buildings referred to in i), ii) or iii) and in which activities different from the ones mentioned in i), ii) or iii) do not occupy more than 35% of the floor area, energy efficiency projects under this Article may also be combined with any of the following investments:

- (a) integrated on-site renewable energy installation generating electricity and/or heat;
- (b) equipment for the storage of the energy generated from the on-site renewable energy installation;
- (c) equipment incorporated in the building for the charging of electric vehicles of the building users;
- (d) investments for the digitalisation of the building, in particular to increase its smart readiness. Eligible investments may include interventions limited to passive in-house wiring or structured cabling for data networks and, if necessary, the ancillary part of the passive network on the private property outside the building. Wiring or cabling for data networks outside the private property is excluded.”;

(c) paragraphs 3, 4 and 5 are replaced by the following:

“3. The eligible costs shall be the overall costs of the energy efficiency project, except for buildings referred to in paragraph 2a, where the eligible costs shall be the overall costs of the

energy efficiency project as well as the investment cost of the various pieces of equipment listed in paragraph 2a.

4. The aid shall be granted in the form of an endowment, equity, a guarantee or a loan to an energy efficiency fund or other financial intermediary, which shall pass it on to the largest extent possible to the final beneficiaries being the building owners or tenants, in the form of higher volumes of financing, lower collateral requirements, lower guarantee premiums or lower interest rates.

5. The aid granted by the energy efficiency fund or other financial intermediary to the eligible energy efficiency projects may take the form of loans or guarantees. The nominal value of the loan or the amount guaranteed shall not exceed EUR 15 million per project at the level of the final beneficiaries, except in the case of combined investments referred to in paragraph 2a, where it shall not exceed EUR 30 million. The guarantee shall not exceed 80% of the underlying loan.”;

(23) Article 52 is replaced by the following:

“Article 52

Aid for fixed broadband networks

1. Aid for fixed broadband network deployment shall be compatible with the internal market pursuant to 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 maximum aid amount for a project shall be established on the basis of a competitive selection process as required by paragraph 7. In the absence of a competitive selection process, 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 and verified ex-post through a claw-back mechanism.

3. The investment shall be located in:

- (a) Areas where there is no NGA network present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network, which shall be verified by mapping and public consultation; or
- (b) Areas where there is only one NGA network present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network, which shall be verified by mapping and public consultation, under the following conditions:
 - (i) As concerns connectivity for households: in areas where the one and only NGA network present or planned cannot reliably provide speeds of 100Mbps download or more. Areas with one present or credibly planned NGA network able to reliably provide speeds of at least 100Mbps download shall be excluded. The aided network shall be capable of reliably providing at least 200Mbps symmetric speeds (upload and download).
 - (ii) As concerns connectivity for socio-economic drivers: in areas where the one and only NGA network present or planned cannot reliably provide speeds of at least 200Mbps symmetric or more than 500Mbps download. Areas with one

present or credibly planned NGA network able to reliably provide speeds of at least 200Mbps symmetric or more than 500Mbps download shall be excluded. The aided network shall be capable of reliably providing at least 1Gbps symmetric speeds.

4. The mapping and public consultation referred to under paragraph 3 shall meet the following requirements:

- (a) The mapping shall identify the geographic target areas envisaged to be covered under the public intervention and shall take into account all NGA/NGN networks present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network. The mapping shall be performed at address level on the basis of premises passed (not premises connected). Mapping shall always be verified through a public consultation.
- (b) The public consultation shall be carried out by the competent public authority through publication of the main characteristics of the planned measure and the list of geographic target areas identified in the mapping exercise on an appropriate website (including at national level). The public consultation shall remain open and available to any interested stakeholders for at least 1 month and invite interested stakeholders to comment on the measure and to submit substantiated information regarding their NGA/NGN networks in the target area present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network. The public consultation shall be based on information at address level on the basis of premises passed (not premises connected).

5. The geographical scope of the aided project shall not include areas where two or more NGA/NGN networks are present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network.

6. The aided project shall bring a significant improvement (step change) compared to networks present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network. This is the case if, as a result of the subsidised intervention, a significant new investment in the broadband network is undertaken and the subsidised network brings significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition compared to the present or credibly planned networks. For a project to be considered to bring significant new investment, it must include substantial investments in passive infrastructure going beyond marginal investments related merely to the upgrade of the active components of the network. For a project to be considered to bring significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition, the subsidised network shall ensure at least a doubling of download and upload speeds compared to the present or credibly planned networks and be capable of providing reliably at least 200Mbps symmetrical speeds (upload and download) for households and at least 1Gbps symmetric speeds for socio-economic drivers.

7. The aid shall be granted as follows:

- (a) The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process in line with the spirit and the principles of public procurement rules and respecting the principle of technology neutrality; or

(b) The aid shall be granted to a public authority to deploy and manage directly or through an in-house entity a passive network. The project shall cover only the predefined target areas and shall not expand to other regions. The public authority shall limit its activity to maintain the passive infrastructure and to grant access to it, but shall not engage in competition at the retail level. The public authority shall ensure accounting separation between the funds used for the operation of the network and other funds at its disposal. Any concession or other entrustment to a third party to build or operate the network shall be allocated through an open, transparent and non-discriminatory competitive selection process, in line with the spirit and the principles of public procurement rules and respecting the principle of technology neutrality.

8. The network shall offer the widest possible active and passive wholesale access, in line with Article 2 (139), under fair and non-discriminatory conditions, including physical unbundling in the case of NGA networks. A project may offer equivalent virtual unbundling instead of physical unbundling if the virtual access product is recognized as equivalent to physical unbundling by the national regulatory authority of the Member State or by the Commission. Active wholesale access shall be granted for at least seven years and the wholesale access to the physical infrastructure including ducts or poles shall not be limited in time. The same access conditions shall apply on the entirety of the subsidised network, including on the parts of such network where existing infrastructures have been used. The access obligations shall be enforced irrespective of any change in ownership, management or operation of the subsidised network. In the case of aid for the construction of ducts, the ducts shall be large enough to cater for several networks and different network topologies.

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

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

(24) The following Articles 52a and 52b are inserted:

“Article 52a

Aid for 4G and 5G mobile networks

1. Aid for 4G and 5G mobile network deployment shall be compatible with the internal market pursuant to 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 maximum aid amount for a project will be established on the basis of a competitive selection process as required by paragraph 7. In the absence of a competitive selection process, 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 and verified ex-post through a claw-back mechanism.

3. 5G investment shall be located in areas where mobile networks have not been deployed or where only mobile networks capable of supporting mobile services of up to 3G are available and where there are no 4G and no 5G mobile networks present or credibly planned to be

deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network, which shall be verified by mapping and public consultation. 4G investment shall be located in areas where mobile networks have not been deployed or where only mobile networks capable of supporting mobile services of up to 2G are available and where there are no 3G, 4G or 5G mobile networks present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network, which shall be verified by mapping and public consultation.

4. The mapping and public consultation referred to in paragraph 3 shall meet the following requirements:

- (a) The mapping shall clearly identify the geographic target areas envisaged to be covered under the public intervention and shall take into account all mobile networks present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network. Mapping shall be performed on the basis of maximum 100x100 meter grids. Mapping shall always be verified through a public consultation.
- (b) The public consultation shall be carried out by the competent public authority through publication of the main characteristics of the planned measure and the list of geographic target areas identified in the mapping exercise on an appropriate website (including at national level). The public consultation shall remain open and available to any interested stakeholders for at least 2 months and invite interested stakeholders to comment on the measure and to submit substantiated information regarding their mobile networks in the target area present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network.

5. The aided infrastructure shall not be taken into account to meet the coverage obligations of the mobile networks operators that arise out of 4G and 5G spectrum licence conditions.

6. The supported project shall bring a significant improvement (step change) compared to mobile networks present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network. This is the case if, as a result of the subsidised intervention, a significant new investment in the mobile network is undertaken and the subsidised network brings significant new capabilities to the market in terms of mobile service availability, capacity, speeds and competition compared to the present or credibly planned networks. For a project to be considered to bring significant new investment, it must include substantial investments in passive infrastructure going beyond marginal investments related merely to the upgrade of the active components of the network. For a project to be considered to bring significant new capabilities to the market in terms of mobile service availability and capacity, speeds and competition: (i) a 5G subsidised network shall provide 5G services where only mobile networks capable of supporting mobile services of up to 3G are available; (ii) a 4G subsidised network shall provide 4G services where only mobile networks capable of supporting mobile services of up to 2G are available.

7. The aid shall be granted to a public authority to deploy and manage directly or through an in-house entity a passive network. The project shall cover only the predefined target areas and shall not expand to other regions. The public authority shall limit its activity to maintain the passive infrastructure and to grant access to it, but shall not engage in competition at the retail

level. The public authority shall ensure accounting separation between the funds used for the operation of the network and other funds at the disposal of the public authority. Any concession or other entrustment to a third party to build or operate the network shall be allocated through an open, transparent and non-discriminatory competitive selection process, in line with the spirit and the principles of public procurement rules and respecting the principle of technology neutrality.

8. The network shall offer the widest possible active and passive wholesale access, in line with Article 2(139), under fair and non-discriminatory conditions. Active wholesale access shall be granted for at least seven years and wholesale access to the physical infrastructure including ducts or poles shall not be limited in time. In the case of aid for the construction of ducts, the ducts shall be large enough to cater at least for all licensed mobile operators.

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

10. Member States shall put in place a monitoring and claw-back mechanism if the amount of aid granted to the project exceeds EUR 1 million.

11. The use of the 4G or the 5G network to provide advanced fixed wireless services shall only be allowed if: (i) the mapping and public consultation exercise includes also the fixed networks present or planned; (ii) 4G or 5G advanced fixed wireless is only allowed in areas where there is no NGA network present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network; (iii) the supported 4G or 5G advanced fixed wireless solution can reliably provide NGA speeds; and (iv) the supported 4G or 5G advanced fixed wireless solution can provide at least a doubling of download and upload speed compared to the fixed networks present or credibly planned to be deployed within three years from the moment of publication of the planned aid measure or within the same time frame as the deployment of the subsidised network.

Article 52b

Aid for projects of common interest in the area of trans-European digital connectivity infrastructure

1. Aid for projects of common interest in the area of trans-European digital connectivity infrastructure financed under the [CEF2 Regulation] or awarded a Seal of Excellence quality label under the [CEF2 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 that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Projects must fulfil all the general compatibility conditions laid down in paragraph 3 cumulatively. They must, in addition, fall under one of the categories of eligible projects laid down in paragraph 4 and must fulfil all specific compatibility conditions for the relevant category laid down in that paragraph.

3. General cumulative compatibility conditions:

- (a) The aided project must be a project of common interest in the area of trans-European digital connectivity infrastructure financed under the [CEF2 Regulation] or awarded a Seal of Excellence quality label under the [CEF2 Regulation];
- (b) The beneficiary must provide a financial contribution of at least 25% of the eligible costs through its own resources or through external financing not containing any public financial support. When the 25% contribution of the beneficiary is provided through external financing via an investment platform combining different sources of financing, the condition that external financing must not contain any public financial support laid down in the previous sentence is replaced by the requirement of a presence in the platform of at least 30% of private investment.
- (c) Only costs that are eligible investment costs under the [CEF2 Regulation] for the deployment of the infrastructure are eligible for aid;
- (d) The project must be selected in compliance with the [CEF2 Regulation] in one of the following ways:
 - (i) by an independent financial intermediary appointed by the European Commission on the basis of commonly agreed investment guidelines;
 - (ii) by the European Commission through a competitive bidding process based on clear, transparent and non-discriminatory criteria; or
 - (iii) by independent experts appointed by the European Commission;
- (e) The project must enable connectivity capabilities going beyond the requirements relating to any existing legal obligations, such as those included in a spectrum license;
- (f) The project must ensure third party open wholesale access including unbundling under fair, reasonable and non-discriminatory conditions in line with Article 52(8) and (9) or Article 52a (8) and (9) as relevant; and
- (g) Projects including elements or entities other than those specified under each relevant category in paragraph (4) are not exempted from notification obligations under this Article.

4. Categories of projects and applicable specific conditions:

- (a) Investments in the deployment of a cross-border section of a 5G corridor along a transport corridor identified in the trans-European transport network guidelines as laid down in Regulation (EU) No 1315/2013 of the European Parliament and of the Council (TEN-T corridors) that meet the following cumulative specific conditions:
 - (i) The project consists of a cross-border section of a 5G corridor which crosses the border between two or more Member States, or crosses the border of at least one Member State and at least one European Economic Area country;
 - (ii) The total cross-border sections of 5G corridors located in a Member State shall not represent more than [10%-15%] of the total length of the 5G corridors in that Member State;
 - (iii) The project ensures a significant new investment in the broadband network going beyond marginal investments related merely to the upgrade of the active components of the network; and
 - (iv) The project supports the deployment of new passive infrastructure only if existing passive infrastructure cannot be reused.

- (b) Investments in the deployment of a cross-border section of a terabit backbone network interconnecting certain computing facilities, supercomputing facilities and data infrastructures that meet the following cumulative specific conditions:
- (i) The project consists of a cross-border section of a backbone network that supports the interconnection with unconstrained end to end connectivity of a minimum of 1Tbps, either by direct connection or by deploying those elements necessary to join a pan-European backbone, of at least two computing facilities, supercomputing facilities and/or data infrastructures: (1) that participate in the European High Performance Computing Joint Undertaking established under Council Regulation (EU) 2018/1488*, or are research infrastructures, research flagships and missions defined under [Horizon Europe Regulation] and Council Regulation (EC) 723/2009**; and (2) which are located in at least two Member States or at least one Member State and at least one member of the European Research Area;
 - (ii) The project ensures a significant new investment in the broadband network going beyond marginal investments, such as investments related to mere software upgrades or licensing;
 - (iii) The project is implemented through the purchase of capacity and/or equipment carried out through public procurement; and
 - (iv) The project supports the deployment of new passive infrastructure only if existing passive infrastructure cannot be reused.
- (c) Investments in the deployment of a cross-border section of a backbone network interconnecting cloud infrastructures that meet the following cumulative specific conditions:
- (i) The project interconnects the cloud infrastructures of eligible socio-economic drivers;
 - (ii) The project consists of a cross-border section of the deployment of new cross-border backbone networks or a significant upgrade of existing ones that (i) crosses the border between two or more Member States or (ii) crosses the border between at least one Member State and at least one European Economic Area country;
 - (iii) The project covers at least three eligible socio-economic drivers, each operating in a different Member State than the others;
 - (iv) The project ensures a significant new investment in the broadband network going beyond marginal investments, such as investments related to mere software upgrades or licensing. The project shall be capable of providing symmetric download and upload speeds of at least multiples of 10Gbps; and
 - (v) The project supports the deployment of new passive infrastructure only if existing passive infrastructure cannot be reused.
- (d) Investments in the deployment of a submarine cable network that meet the following cumulative specific conditions:
- (i) The project consists of a cross-border section of a submarine cable network which (i) crosses the border between two or more Member States, or (ii) crosses the border of at least one Member State and at least one European Economic Area country. Alternatively, the supported infrastructure is a

wholesale only network and improves the connectivity of European outermost regions or overseas territories, even within a single Member State;

- (ii) The project must not concern routes served already by at least two present or credibly planned backbone infrastructures;
- (iii) The project ensures a significant new investment in the broadband network, by rolling-out a new submarine cable or connection to an existing submarine cable, addressing redundancy issues and going beyond marginal investments. The project shall be capable of providing symmetric download and upload speeds of at least 1Gbps; and
- (iv) The project supports the deployment of new passive infrastructure only if existing passive infrastructure cannot be reused.

* Council Regulation (EU) 2018/1488 of 28 September 2018 establishing the European High Performance Computing Joint Undertaking ST/10594/2018/INIT (OJ L 252, 8.10.2018, p. 1-34).

** Council Regulation (EU) 723/2009 ** of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 8.8.2009, p. 1).”;

(25) the following Section 16 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 involved in financial products supported by the InvestEU Fund that provide aid to implementing partners, financial intermediaries and/or 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, and either Article 56e or Article 56f are fulfilled.
3. The aid shall comply with all applicable conditions laid down in the [InvestEU Fund] Regulation and the InvestEU Investment Guidelines [reference].
4. The maximum thresholds laid down in Articles 56e and 56f shall apply to the total outstanding financing, in so far as that financing provided under any financial product supported by the InvestEU Fund, contains aid. The maximum thresholds shall apply:
 - (a) per project in the case of aid covered by Article 56e(2) and (4), Article 56e(5)(a)(i), Article 56e(6) and (7), Article 56e(8)(a) and (b) and Article 56e(9);
 - (b) per final beneficiary in the case of aid covered by Article 56e(5)(a)(ii) and (iii), Article 56e(8)(d), Article 56e(10) and Article 56f.
5. Aid shall not be granted in the form of refinancing of or guarantees on existing portfolios of financial intermediaries.

Article 56e

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

1. Aid to the final beneficiary under a financial product supported by the InvestEU Fund shall comply with:

- (a) the conditions set out in one of paragraphs 2 to 9; and
- (b) in case the financing is provided in the form of loans to the final beneficiary, it shall have an interest rate that corresponds at least to the base rate of the reference rate applicable at the time of the granting of the loan.

2. Aid for projects of common interest in the area of trans-European digital connectivity infrastructure financed under the [CEF2 Regulation] or awarded a Seal of Excellence quality label under the [CEF2 Regulation] shall only be granted to projects fulfilling all general and specific compatibility conditions laid down in Article 52b. The nominal amount of total financing provided to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 150 million.

3. Aid for investments in fixed broadband networks to connect certain eligible socio-economic drivers shall comply with the following conditions:

- (a) aid shall only be granted to projects fulfilling all compatibility conditions laid down in Article 52 unless explicitly indicated otherwise in points (c) and (d) of this paragraph;
- (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 150 million;
- (c) the project connects only socio-economic drivers that are public or private undertakings entrusted with the operation of services of general economic interest within the meaning of Article 106(2) of the Treaty in the areas of education, social services within the meaning of Article 2(170), public administration, transport, postal services or culture. Projects including elements or entities other than those specified under this point are excluded.
- (d) the requirement pursuant to Article 52 to cumulatively carry out a mapping and a public consultation exercise to verify the presence of a market failure is replaced by a requirement that the identified market failure must be verified either by available appropriate mapping or, when such mapping is not available, by a public consultation, as set out below:
 - (i) The mapping can be considered appropriate if it is not older than 18 months and includes all NGA/NGN networks that pass the premises of an eligible socio-economic driver under point (c). This mapping must be carried out by the competent public authority, must take into account all NGA/NGN networks present or credibly planned in the next three years or within the same time frame as the planned supported intervention, and must be performed at address level on the basis of premises passed (not premises connected);
 - (ii) The public consultation must be carried out by the competent public authority through publication on an appropriate website available to any interested stakeholders for at least 1 month with the objective of gathering substantiated information from stakeholders regarding NGA/NGN networks present or credibly planned in the next three years or within the same time frame as the planned supported intervention that passes the premises of an eligible socio-economic driver, based on information at address level on the basis of premises passed (not premises connected).

4. Aid for energy generation and energy infrastructure shall comply with the following conditions:

- (a) aid shall only be granted for investments in energy infrastructure in gas and electricity not exempted from third party access, tariff regulation and unbundling, based on the internal energy market legislation for the following categories of projects:
 - (i) as regards gas infrastructure, projects included in the prevailing Union list of Projects of Common Interest in Annex VII of Regulation (EU) No 347/2013 of the European Parliament and of the Council*;
 - (ii) as regards electricity infrastructure :
 - smart grids, including investments in the development, smartening and modernisation of electricity transmission and distribution infrastructure;
 - other projects:
 - which fulfil any of the criteria laid down in Article 4(1)(c) of Regulation (EU) No 347/2013; or
 - which are included in the prevailing Union list of Projects of Common Interest in Annex VII to Regulation (EU) No 347/2013;
 - other projects, with the exclusion of electricity storage, in assisted areas;
 - (iii) electricity storage projects, based on new and innovative technology, irrespective of the voltage level of the connection to the network;
- (b) investment aid for generation of energy from renewable energy sources shall comply with the following requirements:
 - (i) aid shall only be granted for new installations, also in combination with storage equipment or hydrogen electrolyzers, selected on a competitive, transparent, objective and non-discriminatory basis;
 - (ii) aid shall not be granted for hydropower installations that do not comply with the conditions laid down in Directive 2000/60/EC of the European Parliament and of the Council**;
 - (iii) in case of installations producing biofuels, aid shall only be granted for installations producing sustainable biofuels other than food based biofuels.
- (c) The nominal amount of total financing provided to any final beneficiary per project referred to in point (a) under the support of the InvestEU Fund shall not exceed EUR 150 million. The nominal amount of total financing provided to any final beneficiary per project referred to in point (b) under the support of the InvestEU Fund shall not exceed EUR 75 million.

5. Aid for social, educational, cultural and natural heritage infrastructure and activities shall comply with the following conditions:

- (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), including natural heritage;
 - (ii) EUR 30 million for the activities related to social services and culture;
 - (iii) EUR 5 million for education and training.
- (b) aid shall not be granted for training aimed at complying with mandatory national training requirements.

6. Aid for transport and transport infrastructures shall comply with the following conditions:

- (a) aid for infrastructure, except ports, 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, except for projects concerning port or airport infrastructure;
 - (ii) connections to Trans-European transport network urban nodes;
 - (iii) rolling stock only for the provision of rail transport services not covered by a public service contract within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council^{***}, provided the beneficiary is a new entrant;
 - (iv) urban transport;
 - (v) recharging or refuelling infrastructures that supply vehicles with renewable electricity and/or renewable hydrogen.
- (b) aid for port infrastructure projects shall comply with the following requirements:
 - (i) 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;
 - (ii) 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;
 - (iii) aid shall not be granted for investments in port superstructures.
- (c) The nominal amount of total financing provided under points (a) or (b) of this paragraph to any final beneficiary per project under the support of the InvestEU Fund shall not exceed EUR 150 million.

7. Aid for other infrastructures shall comply with the following conditions:

- (a) aid shall be provided only to the following projects:
 - (i) investment in water supply and waste water infrastructure for the general public;
 - (ii) investment in waste recycling and preparation for re-use in line with Article 47(1) to (6) of this Regulation, insofar as it is aimed at managing waste generated by other undertakings;
 - (iii) investment in research infrastructure;
 - (iv) investment in the construction or upgrade of innovation cluster facilities;

- (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 environmental protection, including climate protection, shall comply with the following conditions:

- (a) aid shall be provided only to the following projects:
 - (i) investments enabling undertakings to remedy or prevent damage to physical surroundings (including climate change) or natural resources by a beneficiary's own activities, insofar as the investment goes beyond Union standards for environmental protection or increases the level of environmental protection in the absence of Union standards or constitutes an early adaptation to future Union standards for environmental protection;
 - (ii) measures improving the energy efficiency of an undertaking, insofar as the energy efficiency improvements are not undertaken to ensure that the undertaking complies with Union standards already adopted, even if they are not yet in force;
 - (iii) remediation of contaminated sites, insofar as no legal or physical person liable for the environmental damage under the applicable law is identified in line with the "polluter pays" principle as referred to in Article 45(3);
 - (iv) environmental studies;
 - (v) enhancement and restoration of biodiversity and ecosystems where that activity contributes to protecting, conserving or restoring biodiversity and to achieving the good condition of ecosystems, or to protecting ecosystems that are already in good condition.
- (b) Without prejudice to point (a) above, insofar as the aid measure relates to the improvement of the energy efficiency of i) residential buildings, ii) buildings dedicated to the provision of education or activities related to social services, iii) buildings dedicated to activities related to public administration, or iv) buildings referred to in i), ii) or iii) and in which activities other than those mentioned in i), ii) or iii) occupy less than 35% of the internal floor area, aid may also be granted for measures that simultaneously improve the energy efficiency of those buildings and integrate any or all of the following investments: integrated installations generating renewable energy on-site the building concerned by the energy efficiency aid measure, equipment and related infrastructure incorporated to the building for the recharging of electric vehicles of the building's users, and investments for the digitalisation of the building, in particular to increase its smart readiness, subject to the following conditions:
 - (i) the integrated on-site renewable energy installation relates to production of electricity and/or heat; it may be combined with equipment for the storage of the renewable energy generated on-site;
 - (ii) the investments for the digitalisation of the building may include interventions limited to passive in-house wiring or structured cabling for data networks and, if necessary, the ancillary part of the passive network on the private property outside the building. Wiring or cabling for data networks outside the private property is excluded;
 - (iii) the final beneficiary of the aid may be either building owner(s) or tenant(s), depending on who obtains the financing for the project;

- (c) the nominal amount of total financing provided to any final beneficiary per project referred to in point (a) of this paragraph under the support of the InvestEU Fund shall not exceed EUR 50 million;
- (d) the nominal amount of total financing provided per project referred to in point (b) under the support of the InvestEU Fund shall not exceed EUR [50] million per final beneficiary and building;
- (e) aid for measures that improve the energy efficiency of buildings referred to in point (b) above may also relate to the facilitation of energy performance contracts subject to the following conditions:
 - (i) the support takes the form of a loan or guarantee to the provider of the energy efficiency improvement measures under an energy performance contract, or consists in a financial product aimed to refinance the respective provider;
 - (ii) the nominal amount of total financing provided under the support of the InvestEU Fund does not exceed EUR 30 million;
 - (iii) the support is provided to SMEs or small mid-caps;
 - (iv) the support is provided only for energy performance contracting within the meaning of Article 2(27) of Directive 2012/27/EU of the European Parliament and of the Council****.

9. Aid for research, development, innovation and digitalisation shall comply with the following conditions:

- (a) aid may be granted for:
 - (i) fundamental research;
 - (ii) industrial research;
 - (iii) experimental development;
 - (iv) process innovation or organisational innovation for SMEs;
 - (v) innovation advisory services and innovation support services for SMEs;
 - (vi) digitalisation for SMEs;
- (b) for projects falling under points (i), (ii) and (iii) of point (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 75 million. For projects falling under points (iv), (v) and (vi) of point (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 30 million.

10. SMEs or, where applicable, small mid-caps may, in addition to the categories of aid provided for in paragraphs 2 to 8, also receive aid in the form of 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 15 million and is provided to:
 - (i) unlisted SMEs that have not yet been operating in any market or have been operating for less than 7 years following their first commercial sale;

- (ii) unlisted 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;
 - (iii) SMEs and small mid-caps that are innovative enterprises [as defined in Article 2(80)]; or
- (b) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 15 million and is provided to SMEs or small mid-caps whose principal activities are located in assisted areas provided that the financing is not used for relocation of activities as defined in Article 2(61a); or
- (c) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR 2 million and is provided to SMEs or small-midcaps.

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. The commercial financial intermediary that provides financing to the final beneficiary shall retain a minimum risk exposure of 20% of each financing transaction.
3. The nominal amount of total financing provided to each final beneficiary by the commercial financial intermediary shall not exceed EUR 7.5 million.

* Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

** Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ L XXX).

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

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

Article 2

This Regulation shall enter into force on third 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
Ursula VON DER LEYEN