ClientEarth in collaboration with Ziegler State Aid AntiTrust — EU & German Competition Law Advice

September 2020

Response to the consultation on the review of the Regional Aid Guidelines

- The references to the European Green Deal in the draft guidelines and the ambition to align regional aid with its objectives, though unavoidable, are particularly welcome. We would also welcome an express reference to articles 7, 9 and 11 TFEU and the need to integrate environmental protection into state aid rules including on regional aid.

- The clear exclusion of coal and lignite from regional aid support shall be maintained in the final version of the guidelines since, as the draft states, those activities are not compatible with the "green oath" – and investments in a sector in structural decline provide no future to the regions.

- Green investments should in turn be particularly encouraged. A "green bonus" in the form of a higher aid intensity and of a lower share of own financing required for an initial investment seems appropriate, as well as in line with Commissioner Vestager's recent proposals.[1]

- The efforts made on making aid measures more transparent should drive Member States to inform the public better, as well as investors and other public authorities. This would lead to increased visibility of their actions to develop their territories and create employment, thus attracting more investment, in a virtuous circle.

- In contrast, the provisions aiming at limiting relocation are particularly weak since there is no particular sanction, such as recovery or suspension of aid granted, to beneficiaries that relocate despite their commitment to the contrary.

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1 Commissioner Vestager's speech of 22 September 2020, at: https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/green-deal-and-competition-policy_en

General remarks: Integrating the "Green Oath" and environmental protection requirements into regional aid

1. As ClientEarth has already submitted in its response to the targeted consultation for the evaluation of the EEAG 2014-2020,[2] "[i]t is about time that Articles 7, 9 and 11 TFEU are duly and fully taken into account in State aid control, by a full reference to these rules in the next guidelines, in the Commission's decision, and an efficient inclusion and enforcement of these Treaty rules into State aid policy and decisions".[3] ClientEarth also demonstrates, in a recent report on "Mainstreaming Climate Protection in EU State aid law"[4] that Articles 7, 9 and 11 TFEU in particular require the Commission to integrate sustainability and environmental protection requirements into State aid policy. Regional aid shall not be an exception to this obligation.

2. Very much related to this is also the "green oath" as stated in the Commission's Green Deal, with the imperative "do no harm".[5] Pursuant to this imperative, "*all EU actions and policies should pull together to help the EU achieve a successful and just transition towards a sustainable future.* (…) *The objective is to ensure that all Green Deal initiatives achieve their objectives in the most effective and least burdensome way and all other EU initiatives live up to a green oath to 'do no harm'.*"[6] Extrapolated into the State aid area, there needs to be an end of State support for any project that contributes to producing greenhouse gas emissions. At the very least, as long as climate-neutral alternatives are available, no more State aid measures should be approved that risk to distort competition between these climate-neutral alternatives and fossil fuel-based solutions (favouring the latter to the disadvantage of the former).

3. The need to revise the Regional Aid Guidelines (RAG) in accordance with the objectives set out in the European Green Deal is also stated in Section 2.2.2. thereof. As foreseen by the Commission, "(t)*he guidelines will be revised by 2021 to reflect the policy objectives of the European Green Deal, supporting a cost-effective transition to climate neutrality by 2050, and will facilitate the phasing out of fossil fuels, in particular those that are most polluting, ensuring a level-playing field in the internal market. These revisions are also an opportunity to address market barriers to the deployment of clean products*. "[7]

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[2] ClientEarth's response to the Targeted Consultation for the Evaluation of the Guidelines on State aid for Environmental protection and Energy 2014-2020 (EEAG), 18 July 2019.

[3] *Ibid*., Section 18.3 (paragraph 44).

[4] ClientEarth and Agora Energiewende's report "State Aid for a Green Recovery: Mainstreaming climate protection objectives in EU State Aid Law", with detailed legal analysis by Redeker Sellner Dahs, to be published on 1st october 2020. See also presentation webinar: https://static.agora-energiewende.de/fileadmin2/Projekte/2020/VAs_sonstige/2020-04_Webinar-Reihe/2020-06-30_State_aid/Presentation_Buck_Delarue_Holtmann_30062020.pdf.

[5] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. The European Green Deal, 11.12.2019 – COM/2019/640 final, p. 19.

[6] *Ibid.*

[7] *Ibid.*, p. 18.

4. In this respect, ClientEarth and Ziegler State Aid AntiTrust ("**Ziegler SAAT**") particularly welcome the statement in point 11 of the draft guidelines to consider that aid to coal and lignite are incompatible with the internal market since these investments are not in line with the European Green Deal. For the same reason, we propose that the Commission goes further and extends this statement to other fossil fuels. Indeed, support to the construction of new fossil fuel installations creates a lock-in risk that is also incompatible with the objectives of the European Green Deal and will prevent the EU from meeting its 2030 targets, as increased under the proposed European Climate Law (see proposed amendments to point 11 below and in annex).

5. In relation to the deployment of clean products, innovative technologies and sustainable activities, in line with the spirit of the European Green Deal and Commissioner Vestager's proposal on 22 September 2020[8], we propose *inter alia* to increase aid intensity for "green bonus projects" that we would define as projects making a genuine contribution to the European Green Deal goals (see below).

6. Section 1 covers the integration of the European Green Deal obejctievs across the regional aid guidelines and section 2 relates to more general suggestions for improvement of the text.

7. For ease of reference, our amendments to the draft guidelines proposed below are replicated in the annex on the Commission's text. References to points of the draft follow the Commission's numerotation.

1 Integrating the Green Deal objectives in regional aid

1.1 Introduction

8. Add, at the end of point 2: "(…), and respect the imperative of reducing greenhouse gas emissions, in line with Articles 7, 9 and 11 of the Treaty (requiring consistency between the Union's State aid policy and the requirements to protect human health and the environment, and to promote sustainable development), and in line with the European Green Deal.[9]"

9. Add, at the end of point 3: "In addition, in line with the 'green oath' as stated in the European Green Deal,[10] regional aid should not be approved as long as it might jeopardise the required 'just transition into a sustainable future'.[11] In concrete terms, as long as climate-neutral alternatives are available, no more State aid measures should be approved that risk to distort competition between these climate-neutral alternatives and fossil-fuel-based solutions by favouring the latter over the former."

10. Add, after "in accordance with Article 107(3) of the Treaty" in point 4: ", while sharing the European Green Deal's requirement of a 'just transition into a sustainable future'.[12]"

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[8] Commissioner Vestager's speech on 22 September 2020, at: https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/green-deal-and-competition-policy_en

[9] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. The European Green Deal, 11.12.2019 – COM (2019) 640 final.

[10] *Ibid*.

[11] *Ibid.*, p. 19.

[12] *Ibid.*

11. Add a footnote at the end of point 7, stating: "Although several Council decisions have already called for a phasing out of environmentally harmful subsidies (for instance, the European Council Conclusions from 23 May 2013 confirmed the need to phase out environmentally or economically harmful subsidies, including for fossil fuels, to facilitate investments in new and intelligent energy infrastructure), no such phasing out has since occurred. The European Green Deal therefore commanded to place the mentioned requirement more prominently in recitals 2-4 above.

12. Supplement point 11: "Regional aid to the production of lignite and coal will not be considered to be compatible with the internal market **under these guidelines** as investments in that sector are not in line with the European Green Deal objectives **nor with the target to reduce greenhouse gas emissions by [55%] by 2030 provided in the European Climate Law. Likewise, any regional aid that supports the combustion of any other fossil fuels, such as fossil gas or oil, be it for electricity or heat generation or for any other purpose, should not be considered compatible with the internal market for the same reason. At the very least, no such support to fossil fuels should be given to the extent it distorts competition between fossil fuels and other energy resources including renewable energy sources, energy efficiency and demand response, favouring the former over the latter."**

13. Add "environmental protection" before "and energy" at the end of point 12.

14. In order to take into account the CJEU's judgement in Case C-594/18P, in footnote 13 replace "The nuclear sector is covered by the Euratom Treaty as to the justification of the objectives of common interest, with State aid assessment under Article 107 TFEU" by: "Aid to the nuclear sector is assessed directly under Article 107 TFEU" (without reference to a justification of an objective of common interest).

1.2 Increasing the EU's climate ambition for 2030 and 2050

15. The Commission has already set out a clear vision of how to achieve climate neutrality by 2050.[13] With its Communication of 17 September 2020,[14] the Commission has presented an impact assessed plan to increase the EU's greenhouse gas emission reductions target for 2030 to 55% compared with 1990 levels. This target, as affirmed by the Commission, "*would not only put the EU firmly on track to achieve climate neutrality, but would also make EU business and industry global trailblazers.*"[15]

16. To meet the objectives to develop the investments, activities and technologies that will drive the transition to a more sustainable economy, and given the still high costs of some of those innovative investments, a "**green bonus**" should be considered. It is also in line with Commissioner Vestager's speech on 22 September 2020. We propose the following additions to the draft:

    a. Point 20 (letter h): add a definition for 'green bonus project': "'*green bonus project' means a project that makes a genuine contribution to the European Green Deal goals*;"

    b. Point 20 (letter o): add "*and for green bonus projects*" after "SMEs" in "The maximum aid intensity includes the increased aid intensity for SMEs".

[13] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank of 28.11.2018 – COM/2018/773 final.

[14] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17.09.2020 – COM(2020) 562 final.

[15] See fn. 14, p. 3.

c. Given the importance of verifying whether a project can qualify as a "green bonus project " and is entitled to higher aid intensity (see our proposal), we recommend to maintain the notification thresholds in point 23 as proposed by the Commission. Therefore, footnote 23 shall read: "This includes increased aid intensities for SMEs *and for green bonus projects*."

d. Add, at the end of points 53 and 58: "For green bonus projects, this financial contribution has to be at least 20% of the eligible costs." Indeed, the required minimum funding from the beneficiary could be lower for green bonus projects that often have high upfront costs and more difficulties to find private financing.

e. At point 102, provide that the maximum aid intensity provide safe harbours also for green bonus projects.

f. Add, at the end of point 180: "The same increases shall be available for green bonus projects. Such increase should generally be available in 'a' areas; in the outermost regions mentioned in Sentence 1, the two increases may be cumulated."

g. Add, at the end of point 181: "These aid intensities may be doubled for green bonus project."

h. Add, at the end of point 182: "The same increase shall be available for green bonus projects."

i. Add, at the end of point 183: "Such 15 percentage points' difference must be calculated without taking into account any increase for a "green bonus" project in an 'a' area."

1.3 Supplying clean, affordable and secure energy

17. While in principle, the energy sector is excluded from the RAG's scope, there is room to pointing out the European Green Deal objective of smart integration of renewables, energy efficiency and other sustainable solutions across sectors.[16]

18. As regards low carbon activities and climate adaptation measures, ClientEarth and Ziegler SAAT welcome the addition of the following passage into point 55 (letter c) of the draft RAG (and propose the changes underlined for purpose of identification):

    "*The project's contribution to the greening of the regional economy should be considered. Investments which contribute substantially to the digital transition or transition towards low carbon, climate neutral or climate-resilient activities (<u>including projects that contribute to the smart integration of renewables, energy efficiency and other sustainable solutions across sectors</u>) without bringing any significant harm to the environment <u>including wildlife (for instance, the impact of new industries projects along rivers on water quality has to be assessed</u>) and which comply with minimum safeguards will be considered as a factor that contributes to regional development.*"

19. It remains unclear what is meant by "*and which comply with minimum safeguards*" in this point 55 letter c, so this passage should be clarified. Ideally, those "minimum safeguards" should be higher than strict compliance with EU environmental laws, which is an absolute requirement for any aid to be considered compatible with the internal market.[17] To the effect of setting genuine "minimum safeguards", the

[16] European Green Deal, p. 6.
[17] See e.g. CJEU judgement, 22 September 2020, *Austria v. Commission*, C-594/18P, ECLI:EU:C:2020:742, par.100.

project's contribution to the greening of the regional economy should constitute a substantial improvement of the digital, energy or climate status of the region. Alignment with, and direct contribution to the National Energy and Climate Plans of the Member State concerned could constitute an appropriate benchmark.

20. We also propose to insert at point 55 (letter g) the following sentence (underlined for purpose of identification): "*The projects' contribution to the region's ability to create new technology through local innovation <u>or a project's genuine contribution to the European Green Deal goals</u> can also be considered. Cooperation with local higher education institutions can be considered positively in this respect*."

21. In addition, we propose to insert a conditionality requirement for operating aid (also to reduce the need for operating aid regarding heating or electricity costs), into two new points 65 and 66 of the RAG as follows:

    65 (new). "*For operating aid, Member States commit to verifying that the beneficiary complies with its obligation to conduct an energy audit in the sense of Article 8 of Directive 2012/27/EU of the European Parliament and of the Council,*[18] *either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System, for example the EU eco-management and audit scheme (EMAS).*[19] *If the beneficiary is not covered by the obligation to conduct an energy audit under Article 8(4) of the Energy Efficiency Directive, Member States commit to verifying that it will conduct one within the first four years after their first application for aid, and then every four years thereafter, unless they carry out energy audits within the framework of certified Energy Management System or Environmental Management System*.

    66 (new). *Member States also commit to monitoring that beneficiaries covered by the obligation to conduct an energy audit under Article 8(4) of the Energy Efficiency Directive will implement the recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 5 years and that the costs of their investments are proportionate.*

    Where the pay-back time for the relevant investments exceeds 5 years or where the costs of their investments are disproportionate, beneficiaries have to:

    a) reduce the carbon footprint of their electricity consumption, for example, through installing an on-site renewable energy generation facility (covering at least 50% of their electricity needs), through a carbon-free power purchase agreement; or alternatively

    b) invest a significant share of at least 80% of the aid amount in projects that lead to substantial reductions of the installation's greenhouse gas emissions and well below the applicable benchmark used for free allocation in the EU Emissions Trading System."

[18] 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).

[19] Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 342, 22. 12.2009, p. 1).

1.4 Pursuing green finance and investment and ensuring a just transition

22. As affirmed in the Amendments adopted by the European Parliament on 17 September 2020 on the proposal for a regulation establishing the Just Transition Fund,[20] "*transitioning to a climate-neutral economy is a challenge for all Member States. It will be particularly demanding for those Member States that rely, or which until recently have relied, heavily on fossil fuels or greenhouse gas intensive industrial activities which need to be phased out or which need to adapt due to the transition towards climate neutrality and that lack the financial means to do so.*"[21]

23. As set out in the European Green Deal[22] and the Sustainable Europe Investment Plan[23], a Just Transition Mechanism should contribute to addressing the social, economic and environmental consequences, in particular for workers affected in the process of transitioning towards Union climate neutrality by 2050. The RAG should also contribute to this just transition, by emphasising social and gender gap reduction objectives in point 55 (d). We propose to add "*including reskilling*" after "general and specific" in the brackets; add "*particularly women*" after workforce in the same sentence; and add "*and make them gain new qualifications suitable for the green economy*" at the end of the second sentence starting by "Emphasis…".

2 Suggestions for general amendments

2.1 Definitions

24. Point 20 (letter j): in line with the draft point 12, all these types of "initial investment" should not anymore be available for large undertakings; except the "initial investment in favour of new economic activity" as defined in letter k of point 20. For the sake of clarity, this should be stated in the "chapeau" of point 20 (letter j).[24]

25. Point 20 (letter m): the definition of "job creation" should reflect the importance that such objective plays in the Just Transition Fund, especially with regards to "green jobs".[25] Point 20 (letter m) should clarify that "Investments should promote, in particular, green jobs [or jobs in the green economy]."[24]

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[20] Amendments adopted by the European Parliament on 17.09 2020 on the proposal for a regulation of the European Parliament and of the Council establishing the Just Transition Fund (COM(2020)0022 – C9-0007/2020 – 2020/0006(COD)).
[21] *Ibid*., Amendment 8.
[22] See fn. 5.
[23] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 14.01.2020 – COM(2020) 21 final.
[24] The suggestions under items 24 and 25 have not been implemented in the document containing the suggested amendments in tracked changes in the text of the draft RAG).
[25] Amendments adopted by the European Parliament on 17.09 2020 on the proposal for a regulation of the European Parliament and of the Council establishing the Just Transition Fund (COM(2020)0022 – C9-0007/2020 – 2020/0006(COD)), Amendment 4.

2.2 Notifiable regional aid

26. As mentioned above under section 1.2, given the importance of verifying whether a project can qualify as a "green bonus project " and is entitled to higher aid intensity (see our proposal), we recommend to maintain the notification thresholds in point 23 as proposed by the Commission. Therefore, footnote 23 shall read: "This includes increased aid intensities for SMEs *and for green bonus projects*."

27. In point 24, the Commission proposes to exempt Member States from notifying individual aid paid under a scheme in two instances:

    - when "*the beneficiary has confirmed that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid*": the rationale for this exemption and for a discrimination between beneficiaries that are already operating an establishment for more than two years and newer ones is unclear (for instance, wouldn't there also be a concern about the incentive effect for relocations to the establishment in which the initial investment for which aid is requested more than two years before the aid application?). It is also difficult to understand how this exemption applies to initial investments relating to the setting up of a new establishment and to the acquisition by an investor of an establishment that has closed or would otherwise have closed. We therefore recommend to delete this phrase.

    - when the "*beneficiary has given a commitment that it will not do so for a period of up to two years after the initial investment for which aid is requested is completed*." We recommend to remove this exemption as well for the following reasons:

        - First, we regret that this commitment relates only to the notification requirements and is not a condition of compatibility of the aid under the guidelines.

        - Second, we wonder how operational this criterion can be since there is no sanction expressly attached to a breach of this commitment: even though the aid could retroactively found to be unlawful, it could still be found compatible and the advantage would remain with the beneficiary despite its quick relocation – which makes the criterion particularly weak.

        - Third, if the purpose of this condition is to dis-incentivise undertakings from relocating and help regions maintain investments and jobs within their territories, a timeline of five years seems more appropriate than only two years (see for example points 52 and 57 about maintaining the investment in the area for at least five years).

        - Fourth, we also note that a similar condition has been imposed by some national authorities (e.g. Wallonia) as a condition to grant aid under the ETS State aid guidelines to electro-intensive industries; this has proven to be neither easy to monitor nor strong – since a relocation can happen progressively rather than in one single operation, with undertakings first opening a new entity, progressively transferring their operations before closing down the original entity.

28. In short, we recommend that all aid under aid schemes be notified without an exception relating to relocation of the beneficiaries. Notification thresholds based on the table drawn under point 23 could equally apply to individual aid and aid paid under schemes.

2.3 Compatibility assessment of regional aid

29. The requirement for the aid to meet an objective of common interest mentioned at point 41(a) should be reviewed in light of paragraphs 20-26 of the CJEU judgement on case C-594/18P *Austria v. Commission*.

30. Point 44(2): two terms should be further defined: the “blacklist” (for “manifest negative effects”) and “absolute decline” (replacing the previous “structural” and “relative” decline).[26] It is particularly important that these notions are defined in relation with the European Green Deal, the Paris agreement and the European Climate Law, as well as the sectors excluded in points 10 and 11 (in particular, the coal and lignite sectors must be considered on absolute decline in this sense). Adjustments may accordingly be necessary in section 5.6.2.1. “Creating overcapacity in a market in absolute decline”.

2.4 Facilitating the development of certain economic activities or of certain economic areas pursuant to Article 107(3)(c) TFEU [titled “Contribution to a common objective” in the draft]

31. At points 46, 47 and 48 it is essential that regional aid under the guidelines *“must”* [and not only “may” or “should”] also contribute to the other objectives of the Union such as the Union’s Digital strategy and the European Green Deal or a fair and inclusive green and digital transition. This wording does not mean that all regional aid shall be directed towards digital, energy or environmental protection activities. In contrast, it means that regional aid shall not harm those objectives of the Union.

32. Point 47: ClientEarth and Ziegler SAAT welcome the statement that “*regional aid shall not support activities that are environmentally harmful, as referred to in paragraphs 54 and 59 below*”, as well as the statements contained in points 54 and 59 themselves.

33. Points 54 and 59: we welcome this reminder of the law (recalled also in the recent CJEU judgement on case C-594/18 P *Austria v. Commission*). However we recommend rephrasing “including in particular” to avoid a restrictive interpretation since this wording is often interpreted by the Commission as a limitation rather than a mere example.[27]

34. At point 55(h), explicit and effective safeguards against relocation of the beneficiary should be inserted and the lack of safeguards should be assessed negatively.

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[26] “Absolute decline” is defined in point 119 as a situation when “the market shows a negative growth rate”. This should be replicated in the definitions for ease of reference.

[27] See e.g. the notion of “interested parties” in Article 1(h) of Council regulation 2015/1589, that reads “*interested party’ means any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid,* ***in particular*** *the beneficiary of the aid, competing undertakings and trade associations*”, that is constantly interpreted by the Commission restrictively as if only beneficiaries of the aid, competitive undertakings and trade associations could qualify as interested parties.

2.5 Appropriateness of regional aid

35. Pursuant to point 70 of the draft RAG, an aid measure will not be considered compatible if “other less distortive policy instruments or other less distortive types of aid instrument make it possible to achieve the same positive contribution to regional development.”

36. Add, at the end of point 70: “In line with the Green Deal objectives, the term ‘less distortive’ in this sense also has to be understood to include ‘less environmentally harmful’ respectively ‘ensuring a higher level of environmental protection’.”

2.6 Proportionality of the aid amount

37. Add, at the end of point 109: “(…) and if they contribute to the Union’s Digital strategy or the European Green Deal.”

2.7 Transparency and evaluation

38. We particularly welcome point 144 and Annex VI on transparency requirements, which are considerably improved. We also welcome that transparency requirements apply for aid from the first euro – this is particularly important for regional aid that are so sensitive in terms of regional development and job creation.

39. For ease of understanding across the EU, point 144(a) should require that at least a summary of the text of the aid measure should be in English.

40. Point 146: the timeline to publish the information should be reduced form 6 months to 1 month since the information would already be available in electronic form in the Member State, especially for measures that have been notified to the Commission. There would thus not be a particular administrative burden on the national authorities for publishing the same information on the relevant websites in a swift manner.

41. Point 51: we recommend that the evaluation report be drawn by two independent experts established in other regions than the one of the aid granting authorities, to increase their independence. The reports should be made public within 1 month (there is currently no deadline in the draft).

2.8 Annex V – Information to be included in the application form for regional investment aid

42. Add, at the end of point 4 (3rd bullet point) of Annex V: “(…)*, in line with the Green Deal*”.

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COMMUNICATION FROM THE COMMISSION

Guidelines on regional state aid

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Guidelines on regional state aid

Table of Content

1. Introduction ... 3
2. Scope and definitions ... 4
2.1. Scope of regional aid ... 4
2.2. Definitions ... 6
3. Notifiable regional aid ... 10
4. Eligible costs ... 11
4.1. Investment aid ... 11
4.1.1. Eligible costs calculated on the basis of investment costs ... 11
4.1.2. Eligible costs calculated on the basis of wage costs ... 12
4.2. Operating aid ... 13
5. Compatibility assessment of regional aid ... 13
5.1. Contribution to a common objective ... 15
5.1.1. Investment aid schemes ... 15
5.1.2. Notifiable individual investment aid ... 16
5.1.3. Operating aid schemes ... 18
5.2. Need for State intervention ... 19
5.3. Appropriateness of regional aid ... 19
5.3.1. Appropriateness among alternative policy instruments ... 19
5.3.2. Appropriateness among different aid instruments ... 20
5.4. Incentive effect ... 20
5.4.1. Investment aid ... 20
5.4.2. Operating aid schemes ... 23
5.5. Proportionality of the aid amount (aid limited to the minimum) ... 23
5.5.1. Investment aid ... 23
5.5.2. Operating aid schemes ... 25
5.6. Avoidance of undue negative effects on competition and trade ... 25

5.6.1. General considerations 25
5.6.2. Manifest negative effects on competition and trade 26
5.6.3. Investment aid schemes 27
5.6.4. Notifiable individual investment aid 28
5.6.5. Operating aid schemes 30
5.7. Transparency 30
6. Evaluation 32
7. Regional aid maps 33
7.1. Population coverage eligible for regional aid 33
7.2. The derogation in Article 107(3)(a) 34
7.3. The derogation in Article 107(3)(c) 34
7.3.1. Predefined ‘c’ areas 35
7.3.2. Non-predefined ‘c’ areas 36
7.4. Maximum aid intensities applicable to regional investment aid 38
7.4.1. Maximum aid intensities in ‘a’ areas 38
7.4.2. Maximum aid intensities in ‘c’ areas 38
7.4.3. Increased aid intensities for SMEs 39
7.5. Notification and declaration of compatibility 39
7.6. Amendments 39
7.6.1. Population reserve 39
7.6.2. Mid-term review 40
8. Applicability of regional aid rules 40
9. Reporting and Monitoring 41
10. Revision 41

1. INTRODUCTION

1. On the basis of Articles 107(3)(a) and (c) of the Treaty on the Functioning of the European Union (TFEU), the Commission may consider compatible with the internal market State aid to promote the economic sustainable development of certain disadvantaged areas within the European Union[1]. This kind of State aid is known as regional aid.

2. In these guidelines, the Commission sets out the conditions under which regional aid may be considered to be compatible with the internal market and establishes the criteria for identifying the areas that fulfil the conditions of Articles 107(3)(a) and (c) of the Treaty~~.~~, and respect the imperative of reducing greenhouse gas emissions, in line with Articles 7, 9 and 11 of the Treaty (requiring consistency between the Union's State aid policy and the requirements to protect human health and the environment, to promote sustainable development), in line with the European Green Deal.[1]

3. The primary objective of State aid control in the field of regional aid is to allow aid for regional sustainable development while ensuring a level playing field between Member States, in particular by preventing subsidy races that may occur when they try to attract or retain businesses in disadvantaged areas of the Union, and to limit the effects of regional aid on trade and competition to the minimum necessary. In addition, in line with the "green oath" as stated in the European Green Deal,[2] regional aid should not be approved as long as it might jeopardise the required '*just transition into a sustainable future*'.[3] In concrete terms, as long as climate-neutral alternatives are available, no more State aid measures should be approved that risk to distort competition between these climate-neutral alternatives and fossil-fuel-based solutions by favouring the latter over the former.

4. The objective of geographical development distinguishes regional aid from other forms of aid, such as aid for research, development and innovation, employment, training, energy or for environmental protection, which pursue other objectives of common interest in accordance with Article 107(3) of the Treaty~~.~~, while sharing the European Green Deal's requirement of a '*just transition into a sustainable future*'.[4] In some circumstances higher aid intensities may be allowed for those other types of aid, whenever granted to undertakings established in disadvantaged areas, in recognition of the specific difficulties which they face in such areas[2].

5. Regional aid can only play an effective role if it is used sparingly and proportionately and is concentrated on the most disadvantaged regions of the Union[3]. In particular, the permissible aid ceilings should reflect the relative seriousness of the problems affecting the development of the regions concerned. Furthermore, the advantages of the aid in terms of the development of a less-favoured region must outweigh the resulting distortions

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[1] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11.12.2019 – COM (2019) 640 final.

[2] See fn. 1, p. 19.

[3] *Ibid.*

[4] *Ibid.*

of competition[4]. The weight given to the positive effects of the aid is likely to vary according to the applied derogation of Article 107(3) of the Treaty, so that a greater distortion of competition can be accepted in the case of the most

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1 Areas eligible for regional aid under Article 107(3)(a) of the Treaty, commonly referred to as 'a' areas, tend to be the more disadvantaged within the Union in terms of economic development. Areas eligible under Article 107(3)(c) of the Treaty, referred to as 'c' areas, also tend to be disadvantaged but to a lesser extent.

2 Regional top-ups for aid granted for such purposes are therefore not considered as regional aid.

3 Each Member State may identify these areas in a regional aid map on the basis of the conditions laid down in Section 5.

4 See in this respect case 730/79, Philip Morris [1980], ECLI:EU:C:1980:209, paragraph 17 and in case C-169/95, Spain v Commission [1997], ECLI:EU:C:1997:10, paragraph 20.

disadvantaged regions covered by Article 107(3)(a) than in those covered by Article 107(3)(c)[5].

6. Regional aid can further be effective in promoting the economic development of disadvantaged areas only if it is awarded to induce additional investment or economic activity in those areas. In certain very limited, well-identified cases, the obstacles that these particular areas may encounter in attracting or maintaining economic activity may be so severe or permanent that investment aid alone may not be sufficient to allow the development of that area. Only in such cases may regional investment aid be supplemented by regional operating aid not linked to an investment.

7. In 2019, the Commission launched an evaluation of the regional aid framework in the context of the Fitness Check of the 2012 State aid modernisation package to assess if the regional aid guidelines were still fit for purpose. The preliminary results showed that, in principle, the rules worked well, but that they require some improvements to reflect economic developments. In addition, the new policy priorities such as the "European Green Deal"[6] and "A Europe fit for the digital age[7]" need to be taken into account and require some modifications to the rules.[5]

8. As regards the economic disturbance created by the COVID-19 outbreak, the Commission put in place more targeted instruments. At the same time, the shock caused by the pandemic might have more long-lasting effects on certain regions. At this point in time, it is too early to predict the impact of the COVID-19 crisis in the mid- and long- term and which regions will be particularly affected. To address the difficulties of Member States that have been most affected by the crisis, the Commission plans a mid-term review of the regional aid maps in 2024, which will take into account statistics of the years 2020 to 2022.

2. SCOPE AND DEFINITIONS

2.1. Scope of regional aid

9. The compatibility conditions set out in these guidelines are applicable to notifiable regional aid schemes and notifiable individual aid.

10. Regional aid to the steel sector[8] will not be considered to be compatible with the internal market.

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5 See in this respect case T-380/94, AIUFFASS and AKT v Commission [1996], ECLI:EU:T:1996:195, paragraph 54.

6 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11.12.2019 –

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5 Although several Council decisions have already called for a phasing out of environmentally harmful subsidies (for instance, the European Council Conclusions from 23 May 2013 confirmed the need to phase out environmentally or economically harmful subsidies, including for fossil fuels, to facilitate investments in new and intelligent energy infrastructure.), no such phasing out has since occurred. The European Green Deal therefore commanded to place the mentioned requirement more prominently in recitals 2-4 above.

COM (2019) 640 final.

[7] https://ec.europa.eu/digital-single-market/en/news/shaping-europes-digital-future-commission-presents-strategies-data-and-artificial-intelligence

[8] As defined in Annex IV.

11. Regional aid to the production of lignite and coal will not be considered to be compatible with the internal market under these guidelines as investments in that sector are not in line with the European Green Deal objectives nor with the target to reduce greenhouse gas emissions by [55%] by 2030 provided in the European Climate Law. Likewise, any regional aid that supports the combustion of any other fossil fuels, such as fossil gas or oil, be it for electricity or heat generation or for any other purpose, should not be considered compatible with the internal market under these guidelines for the same reason. At the very least, no such support to fossil fuels should be given to the extent it distorts competition between fossil fuels and other energy resources including renewable energy sources, energy efficiency and demand response, favouring the former over the latter.

12. The Commission will apply the principles set out in these guidelines to regional aid in all sectors of economic activity, apart from sectors that are subject to specific State aid rules, which is currently the case in fisheries and aquaculture[9], agricultural[10], transport[11], broadband[12], environmental protection and energy[13].

13. The Commission will apply the principles set out in these guidelines for processing and marketing of agricultural products into non-agricultural products. These guidelines apply to aid measures supporting activities outside the scope of Article 42 of the Treaty but covered by the Rural Development Regulation[14] and are either co-financed by the European Agriculture Fund for Rural Development (EAFRD) or are being granted as an additional national financing to such co-financed measures, unless sectoral rules provide for otherwise.

14. Large enterprises tend to be less affected than small and medium enterprises (SMEs) by regional handicaps for investing or maintaining economic activity in a less developed area. Firstly, large enterprises can more easily obtain capital and credit on global markets and are less constrained by the more limited offer of financial services in a particular disadvantaged region. Secondly, investments by large enterprises can produce economies of scale that reduce location-specific initial costs and, in many respects, are not tied to the region in which the investment takes place. Thirdly, large enterprises making investments usually possess considerable bargaining power vis-à-vis the authorities, which may lead to aid being awarded without need or due justification. Finally, large enterprises are more likely to be significant

[9] As covered by 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).

[10] State aid for the primary production, processing and marketing of agricultural products resulting in agricultural products listed in Annex I to the Treaty and forestry is subject to rules laid down in the Guidelines for state aid in the agricultural sector.

[11] Transport means transport of passengers by aircraft, maritime transport, road, railway and by inland waterway or freight transport services for hire or reward. Transport infrastructure covered by specific guidelines, such as airports (Guidelines on State aid to airports and airlines OJ C 99, 4.4.2014, p. 3.) is also excluded from these guidelines.

[12] EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband

networks (OJ C25, 26.01.2013, p.1).

13 The Commission will assess the compatibility of state aid to the energy sector on the basis of the future energy and environmental aid guidelines, amending the current guidelines on state aid for environmental protection, where the specific handicaps of the assisted areas will be taken into account. ~~The nuclear sector is covered by the Euratom Treaty as to the justification of the objectives of common interest, with State aid assessment~~Aid to the nuclear sector is assessed directly under Article 107 TFEU.

14 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.

players on the market concerned and, consequently, the investment for which the aid is awarded may distort competition and trade on the internal market.

15. Since regional aid to large enterprises for their investments is unlikely to have an incentive effect, it cannot be regarded to be compatible with the internal market under Article 107(3)(c) of the Treaty, unless it is granted for initial investments that create new economic activities in these areas[15].

16. Regional aid aimed at reducing the current expenses of an undertaking constitutes operating aid. Operating aid may be considered compatible if it aims to reduce certain specific difficulties faced by SMEs in particularly disadvantaged areas falling within the scope of Article 107(3)(a) of the Treaty, or to compensate for additional costs to pursue an economic activity in outermost regions or to prevent or reduce depopulation in very sparsely populated areas.

17. Operating aid awarded to undertakings whose principal activity falls under Section K 'Financial and insurance activities' of the NACE Rev. 2 statistical classification of economic activities[16] or to undertakings that perform intra-group activities and whose principal activity falls under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2 will not be considered to be compatible with the internal market.

18. Regional aid may not be awarded to firms in difficulties, as defined for the purposes of these guidelines by the Community guidelines on State aid for rescuing and restructuring firms in difficulty[17], as amended or replaced.

19. When assessing regional aid awarded to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered[18].

2.2. Definitions

20. For the purposes of these guidelines, the following definitions apply:

a) 'a' areas mean those areas designated in a regional aid map in application of the provisions of Article 107(3)(a) of the Treaty; 'c' areas mean those areas designated in a regional aid map in application of the provisions of Article 107(3)(c) of the Treaty;

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15 See, paragraph 19(k).

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

17 Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2). As explained in paragraph 20 of those guidelines, given that its very existence is in danger, a firm in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured.

18 See in this respect the joint Cases T-244/93 and T-486/93, TWD Textilwerke Deggendorf GmbH v Commission of the European Communities, [1995] ECR II-02265.

b) 'absolute decline (of a market)' means when the market shows a negative growth rate;

~~b)~~c) 'ad hoc aid' means aid that is not awarded on the basis of a scheme;

~~c)~~d) 'adjusted aid amount' means the maximum permissible aid amount for a large investment project, calculated according to the following formula:

adjusted aid amount = R × (50 + 0.50 × B + 0.34 × C)

where: R is the maximum aid intensity _applicable in the area concerned, excluding the increased aid intensity for SMEs. B is the part of eligible costs between EUR 50 million and EUR 100 million. C is the part of eligible costs above EUR 100 million;

~~d)~~e) 'aid intensity' means the gross grant equivalent expressed as a percentage of the eligible costs, before any deduction of tax or other charge;

f) 'blacklist' means [*to be defined*]

~~e)~~g) 'date of award of the aid' means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime;

~~f)~~h) 'EU27' means all Member States (from 2020);

~~g)~~i) 'evaluation plan' means a document covering one or more aid schemes and containing at least the following minimum elements: the objectives to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the interim and of the final evaluation reports, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation;

j) 'green bonus project' means a project that makes a genuine contribution to the European Green Deal goals;

~~h)~~k) 'gross grant equivalent' (GGE) means the discounted amount of the aid if it had been provided in the form of a grant to the beneficiary, before any deduction of tax or other charge, as calculated at the time of award of the aid or at the time of notification of the aid to the Commission, whichever is earlier, on the basis of the reference rate applicable on that date;

i) 'individual aid' means ad hoc aid or awards of aid to individual beneficiaries on the basis of an aid scheme;

j) 'initial investment' means

a) ~~a)~~ an investment in tangible and intangible assets related to:-

– —the setting-up of a new establishment;

– —the extension of the capacity of an existing establishment;

—the diversification of the output of an establishment into products

- or services not previously produced in the establishment; or
- a fundamental change in the overall production process of an existing establishment; or

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

k) ~~k)~~ 'initial investment in favour of new economic activity' means:

a) An investment in tangible and intangible assets related to:

– the setting up of a new establishment; or

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

b) the acquisition by an investor unrelated to the seller of assets belonging to an establishment that has closed or would have closed had it not been purchased, under the condition that the new activity to be performed using the acquired assets is not a same or similar activity to the activity performed in the establishment prior to the acquisition;

l) 'intangible assets' means assets that do not have a physical or financial embodiment such as patent rights, licences, know-how or other intellectual property;

m) 'job creation' means a net increase in the number of employees in the establishment concerned compared with the average over the previous 12 months after deducting from the apparent created number of jobs any job lost during that period expressed in annual labour units;

n) 'large investment project' means an initial investment with eligible costs exceeding EUR 50 million;

o) 'maximum aid intensity' means the aid intensity reflected in the regional aid maps as laid down in subsection 7.4. The maximum aid intensity includes the increased aid intensity for SMEs and for green bonus projects;

p) 'number of employees' means the number of annual labour units (ALU), namely the numbers of persons employed full-time in one year; persons working part-time or employed in seasonal work are counted in ALU fractions;

q) 'outermost regions' means the regions referred to in Article 349 of the Treaty[19];

r) 'operating aid' means aid aimed to reduce an undertaking's current expenditure. This includes cost categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent and administration, but excludes depreciation charges and the

[19] Currently: Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands. (OJ C 202, 7.6.2016, p. 195.) Saint-Martin is not included in the NUTS 2021.

costs of financing if these have been included in the eligible costs when granting regional investment aid;

s) ‘regional aid map’ means the list of areas designated by a Member State in accordance with the conditions laid down in these guidelines and approved by the Commission;

t) ‘relocation’ means a transfer of the same or a similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product or service in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the beneficiary in the EEA;

u) ‘same or a similar activity’ means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities;

v) ‘sectoral aid scheme‘ means a scheme which covers activities falling within the scope of less than five classes (four-digit numerical code) of the NACE Rev.2 statistical classification;

w) ‘single investment project’ means any initial investment started by the same beneficiary (at group level) in a period of three years from the date of start of works on another aided investment in the same NUTS 3 region;

x) ‘SMEs’ means undertakings that fulfil the conditions laid down in Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises[20];

y) ‘start of works’ means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment;

z) ‘sparsely populated areas’ mean those areas designated by the Member State concerned in accordance with paragraph 169;

aa) ‘tangible assets’ means assets such as land, buildings, and plant, machinery and equipment;

[20] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

bb) 'very sparsely populated areas' means NUTS 2 regions with less than 8 inhabitants per km2 (based on Eurostat data on population density for 2018) or parts of such NUTS 2 regions designated by the Member State concerned in accordance with paragraph 169;

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

3. NOTIFIABLE REGIONAL AID

21. In principle, Member States must notify regional aid pursuant to Article 108(3)[21] of the Treaty, with the exception of measures that fulfil the conditions laid down in a block exemption Regulation adopted by the Commission pursuant to Article 1 of Council Regulation (EU) 2015/1588[22].

22. The Commission will apply these guidelines to notifiable regional aid schemes and notifiable individual regional aid.

23. Individual aid granted under a notified scheme remains subject to the notification obligation pursuant to Article 108(3) of the Treaty if the aid from all sources exceeds the notification threshold as established below:

Maximum aid intensity[23]	Notification threshold
10 %	EUR 7.5 million
15 %	EUR 11.25 million
20 %	EUR 15 million
25 %	EUR 18.75 million
30 %	EUR 22.5 million
35 %	EUR 26.25 million
40 %	EUR 30 million
50 %	EUR 37.5 million

21 The Commission intends to exempt from the notification obligation ad-hoc aid to infrastructure meeting the compatibility criteria of a general block exemption regulation despite the fact that it is not granted as part of a scheme.

22 Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 248, 24.9.2015, p. 1).

23 This includes increased aid intensities for SMEs and for green bonus projects.

60 %	EUR 45 million
>=70 %	EUR 52.5 million

24. Individual aid granted under a notified scheme remains also subject to the notification obligation pursuant to Article 108(3) of the Treaty and the notification thresholds mentioned in point 23 apply. ~~unless the beneficiary has confirmed that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid~~ and the ~~beneficiary has given a commitment that it will not do so for a period of up to two years after the initial investment for which aid is requested is completed~~

4. ELIGIBLE COSTS

4.1. Investment aid

25. The eligible costs shall be as follows:

a) investment costs in tangible and intangible assets; or

a) the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years; or

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

26. Where eligible costs are established on the basis of investment costs in tangible and intangible assets, only costs of assets that form part of the initial investment in the establishment of the aid beneficiary located in the targeted assisted area are eligible.

27. By way of derogation to the condition in paragraph 26, the costs of vendor tools located in establishments of suppliers may be included in the eligible costs of the aided initial investment if they stay in the ownership and on the balance sheet of the aid beneficiary, and are used exclusively to manufacture intermediate products needed for the production process resulting from the assisted initial investment. In addition, the establishment of the supplier itself has to be located in an assisted region, and the aid intensity applied to the costs of the vendor tools must not exceed the lower of the aid intensities that apply for the region where the initial investment takes place or where the establishment of the supplier using the vendor tools is located, respectively.

4.1.1. Eligible costs calculated on the basis of investment costs

28. The assets acquired should be new, except for SMEs or in the case of acquisition of an establishment[24].

29. For SMEs, up to 50 % of the costs of preparatory studies or consultancy costs

linked to the investment may also be considered as eligible costs.

[24] Defined in paragraph 20 (j) and (k).

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

31. For aid awarded for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works.

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

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

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

33. In the case of acquisition of an establishment only the costs of buying the assets from third parties unrelated to the buyer should be taken into consideration. The transaction must take place under market conditions. Where aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets should be deducted from the eligible costs related to the acquisition of an establishment. If the acquisition of an establishment is accompanied by an additional investment eligible for regional aid, the eligible costs of this latter investment should be added to the costs of purchase of the assets of the establishment.

34. For large enterprises, costs of intangible assets are eligible only up to a limit of 50 % of the total eligible investment costs for the initial investment. For SMEs, the full costs related to intangible assets may be taken into consideration.

35. Intangible assets which are eligible for the calculation of the investments costs must remain associated with the assisted area concerned and must not be transferred to other regions. To this end, the intangible assets must fulfil the following conditions:

a) they must be used exclusively in the establishment receiving the aid;

b) they must be amortisable;

c) they must be purchased under market conditions from third parties unrelated to the buyer;

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

4.1.2. Eligible costs calculated on the basis of wage costs

36. Regional aid may also be calculated by reference to the estimated wage costs arising from job creation as a result of an initial investment. Aid can compensate only the wage costs of the persons hired calculated over a period

of two years and the resulting intensity cannot exceed the applicable aid intensity in the area concerned.

37. Where eligible costs are calculated by reference to the estimated wage costs as referred to in paragraph 36, the following conditions must be fulfilled:

a) the investment project must lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months, meaning that any job lost must be deducted from the apparent created number of jobs during that period;

b) each post must be filled within one year of the completion of works;

c) each job created through the investment must 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.

4.2. Operating aid

38. Eligible costs in the case of operating aid schemes must be predefined and fully attributable to the problems that the aid is intended to address, as demonstrated by the Member State.

39. In outermost regions, the operating aid schemes can compensate for the additional operating costs incurred in those regions as a direct result of one or several of the permanent handicaps referred to in Article 349 of the Treaty. Those additional costs must be quantified in relation to the level of costs incurred by similar undertakings established in other regions of the Member State concerned.

5. COMPATIBILITY ASSESSMENT OF REGIONAL AID

40. To assess whether a notified aid measure can be considered compatible with the internal market, the Commission generally analyses whether the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition. This is done based on "common assessment principles" [25].

41. The Commission will therefore consider an aid measure compatible with the Treaty only if it satisfies each of the following criteria:

a) contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 107(3) of the Treaty; (section **5.1**)

b) need for state intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a

[25] These were defined and operationaliz~~a~~ed for the purposes of regional aid following the Commission communication on state aid modernization of 8 May 2012 which called for the identification and definition of common principles applicable to the assessment of the compatibility of all aid measures. They later proved to be fit for purpose in the context of the fitness check exercise in 2020.

market failure or addressing an equity or cohesion concern; (section 5.2)

c) appropriateness of the aid measure: the proposed aid measure must be an appropriate policy instrument to address the objective of common interest; (section 5.3)

d) incentive effect: the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or it would carry out in a restricted or different manner or location; (section 5.4)

e) proportionality of the aid (aid to the minimum): the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned; (section 5.5)

f) avoidance of undue negative effects on competition and trade between Member States: the negative effects of aid must be sufficiently limited, so that the overall balance of the measure is positive (section 5.6)

g) transparency of the aid: Member States, the Commission, economic operators, and the public, must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder. (section 5.7)

42. The overall balance of certain categories of schemes may further be made subject to a requirement of ex post evaluation as described in section 6 of these guidelines. In such cases, the Commission may limit the duration of those schemes (normally to four years or less) with a possibility to re-notify their prolongation afterwards.

43. If a State aid measure or the conditions attached to it (including its financing method when the financing method forms an integral part of the State aid measure) entail a non-severable violation of Union law, the aid cannot be declared compatible with the internal market[26].

44. The assessment of individual aid measures takes place in three steps, based on the Common assessment principles:

1. ~~1.~~ in a first step, the Commission checks whether minimum requirements regarding appropriateness, incentive effect and credibility of counterfactual scenario[27], proportionality of the aid, its contribution to regional development and transparency requirements are met (see sections -5.5 and 5.7);

[26] See for instance case C-156/98 *Germany* v *Commission* [2000] ECLI:EU:C:2000:467, paragraph 78 and case C-333/07 *Régie Networks v Rhone Alpes Bourgogne* [2008] ECLI:EU:C:2008:764, paragraphs 94 to 116.

[27] The counterfactual scenario corresponds to the scenario in which no aid is provided by the Member State.

2. in the second step, if the minimum requirements are met[28], it is verified that the aid does not lead to manifest negative effects (blacklist) that would prohibit the granting of aid. This would happen, for example, if it created overcapacity in a sector in absolute decline, if it attracted an investment that, without the aid, would have gone to another region with a similar or worse socio-economic situation, or if it was causal for the relocation of activities from elsewhere in the EEA (see section 5.6.2);
3. in the third step, for aid projects which are not blacklisted, and meet the minimum requirements, a balancing is carried out to ensure that the contribution to regional development outweighs the negative effects on trade and competition (see sections 5.6.1 and 5.6.4).

45. In assessing the compatibility of any individual aid with the internal market, the Commission will take account of any proceedings concerning infringement to Articles 101 or 102 of the Treaty which may concern the beneficiary of the aid and which may be relevant for its assessment under Article 107(3) of the Treaty[29].

~~5.1. Contribution to a common objective~~

5.1. Facilitating the development of certain economic activities or of certain economic areas pursuant to Article 107(3)(c) TFEU

46. The primary objective of regional aid is to reduce the development gap between the different regions in the Union. It contributes to the Union's cohesion policy which aims to strenghten economic and social cohesion by reducing disparities in the level of development between regions. Regional aid ~~may~~must also contribute to the other objectives of the Union such as the Union's Digital strategy and the European Green Deal. The European Green Deal is the Union's new growth strategy to transform the Union into a fair and prosperous society with a modern, resource-efficient and competitive economy with zero net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.

47. Regional aid should support the most disadvantaged of the Union's regions. Regional aid may also contribute to the achievement of the objectives of the European Green Deal by providing support for sustainable investment and activities in those regions. This way, regional aid ~~may~~must contribute, through its cohesion objective, to a fair and inclusive green and digital transition. As such, and in order to contribute to lasting and sustainable regional development, regional aid shall not support activities that are environmentally harmful, as referred to in paragraphs 54 and 59 below.

5.1.1. Investment aid schemes

48. Regional aid schemes should form an integral part of a regional development strategy with clearly defined objectives that are compatible with the green and digital transition at EU level, and ~~should~~must be consistent with and contribute towards these objectives.

[28] See case C-654/17 P - *Bayerische Motoren Werke v Commission and Freistaat Sachsen*. ECLI:EU:C:2019:634

[29] See case C-225/91 *Matra v Commission*, [1993] ECLI:EU:C:1993:239, paragraph 42.

49. Member States should demonstrate that the measure is consistent with and contributes to the development strategy of the area concerned. For this purpose, Member States can rely on evaluations of past State aid schemes, impact assessments made by the granting authorities, or expert opinions. To ensure that the aid scheme contributes to this development strategy, it must include a system that will enable the granting authorities to prioritise and select the investment projects according to the objectives of the scheme (for example, on the basis of a formal scoring approach).

50. Regional aid schemes may be put in place in 'a' areas to support initial investments of SMEs or of large enterprises. In 'c' areas schemes may be put in place to support initial investments of SMEs and initial investments in favour of new economic activities of large enterprises.

51. When awarding aid to individual investment projects on the basis of a scheme, the granting authority must confirm that the selected project will contribute towards the objective of the scheme and thus towards the development strategy of the area concerned. For this purpose, Member States should rely on the information provided by the aid applicant in the aid application form where the positive effects of the investment on the area concerned must be described[30].

52. To ensure that the investment makes a real and sustained contribution to the development of the recipient area, the investment must be maintained in that area for at least five years, or three years for SMEs, after its completion[31].

53. To ensure that the investment is viable, the Member State must ensure that the beneficiary provides a financial contribution of at least 25 %[32] of the eligible costs, through its own resources or by external financing, in a form that is free of any public support[33]. For green bonus projects, this financial contribution has to be at least 20 % of the eligible costs.

54. To avoid that State aid measures would lead to environmental harm, Member States must also ensure compliance with Union environmental legislation, including in particular the need to carry out an environmental impact assessment when required by law and ensure all relevant permits.

5.1.2. *Notifiable individual investment aid*

55. To demonstrate the regional contribution of notifiable individual investment aid, Member States may use a variety of indicators such as the ones mentioned below that can be both direct (for example, direct jobs created) and

[30] See Annex V.

[31] The obligation to maintain the investment in the area concerned for a minimum period of 5 years (3 years for SMEs) should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, regional aid may not be awarded to replace that plant or equipment.

[32] The 25 % own contribution requirement in paragraph 38 does not apply to investment aid granted for investments in outermost regions where the maximum aid intensities can exceed 75 % GGE and go up to 90 % for SMEs in accordance with paragraph 173.

[33] This is not the case for example for subsidised loans, public equity-capital loans or public participations which do not meet the market investor principle, state guarantees containing elements of aid, or public support granted within the scope of the de minimis rule.

indirect (for example, local innovation, contribution to green and digital transition):

a) The number of direct jobs created by the investment is an important indicator of the contribution to regional development. The quality of the jobs created and the required skill level should also be considered.

b) An even higher number of new jobs might be created in the local (sub-)supplier network, helping to better integrate the investment in the region concerned and ensuring more widespread spillover effects. The number of indirect jobs created will therefore also be taken into account.

c) The project's contribution to the greening of the regional economy should be considered. Investments which contribute substantially to the digital transition or transition towards low carbon, climate neutral or climate-resilient activities (including projects that contribute to the smart integration of renewables, energy efficiency and other sustainable solutions across sectors) without bringing any significant harm to the environment including wildlife (for instance, the impact of new industries projects along rivers on water quality has to be assessed) and which comply with minimum safeguards will be considered as a factor that contributes to regional development.

d) A commitment by the beneficiary to enter into widespread training activities to improve the skills (general and specific, including reskilling) of its workforce, particularly women, will be considered as a factor that contributes to regional development. Emphasis will also be put on providing traineeships or apprenticeships, especially for young people and on training that improves the knowledge and employability of workers outside the undertaking~~.~~ and make them gain new qualifications suitable for the green economy. General or specific training for which training aid has been granted will not be counted as a positive effect of the regional aid to avoid double counting.

e) External economies of scale or other benefits from a regional development viewpoint may arise as a result of proximity (clustering effect). Clustering of undertakings in the same industry allows individual plants to specialise more, which leads to increased efficiency. However, the importance of this indicator in determining the contribution to regional development depends on the state of development of the cluster.

f) Investments embody technical knowledge and can be the source of a significant transfer of technology (knowledge spillovers). Investments taking place in technology intensive industries are more likely to involve technology transfer to the recipient region. The level and the specificity of the knowledge dissemination are also important in this regard.

g) The projects' contribution to the region's ability to create new technology through local innovation or a project's genuine contribution to the European Green Deal goals can also be considered. Cooperation with local higher education institutions can be considered positively in this respect.

h) The duration of the investment and possible future follow-on investments are an indication of a durable engagement of a company in the region concerned.

56. Member States can refer to the business plan of the aid beneficiary which could provide information on the number of jobs to be created, salaries to be paid (increase in household wealth as spill-over effect), volume of acquisition from local producers, turnover generated by the investment and benefiting the area possibly through additional tax revenues.

57. To ensure that the investment makes a real and sustained contribution to the development of the recipient area, the investment must be maintained in that area for at least five years, or three years for SMEs, after its completion[34].

58. To ensure that the investment is viable, the Member State must ensure that the beneficiary provides a financial contribution of at least 25 %[35] of the eligible costs, through its own resources or by external financing, in a form that is free of any public support[36]. For green bonus projects, this financial contribution has to be at least 20 % of the eligible costs.

59. To avoid that State aid measures would lead to environmental harm, Member States must also ensure compliance with Union environmental legislation, including in particular the need to carry out an environmental impact assessment when required by law and ensure all relevant permits.

60. For ad hoc aid[37], the Member State must demonstrate, in addition to the requirements laid down in paragraphs 51 to 54, that the project is coherent with and contributes towards the development strategy of the area concerned.

5.1.3. Operating aid schemes

61. Operating aid schemes will promote the development of disadvantaged areas only if the challenges that these areas face are clearly identified in advance. The obstacles to attracting or maintaining economic activity may be so severe or permanent that investment aid alone is not sufficient to allow the development of those areas.

62. As regards aid to reduce certain specific difficulties faced by SMEs in ‘a’ areas, the Member States concerned must demonstrate the existence and importance of those specific difficulties and must demonstrate that an operating aid scheme is needed as those specific difficulties cannot be overcome with investment aid.

63. As regards operating aid to compensate certain additional costs in the outermost regions, the permanent handicaps which severely restrain the development of the outermost regions are set out in Article 349 of the Treaty

[34] The obligation to maintain the investment in the area concerned for a minimum period of 5 years (3 years for SMEs) should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, regional aid may not be awarded to replace that plant or equipment.

[35] The 25 % own contribution requirement in paragraph 38 does not apply to investment aid granted for investments in outermost regions where the maximum aid intensities can exceed 75 % GGE and go up to 90 % for SMEs in accordance with paragraph 173.

[36] This is not the case for example for subsidised loans, public equity-capital loans or public participations which do not meet the market investor principle, state guarantees containing elements of aid, or public support granted within the scope of the de minimis rule.

[37] Ad hoc aid is subject to the same requirements as individual aid granted on the basis of a scheme, unless otherwise mentioned.

and include remoteness, insularity, small size, difficult topography and climate, and economic dependence on a few products. The Member State concerned must however identify the specific additional costs related to these permanent handicaps that the operating aid scheme is intended to compensate.

64. As regards operating aid to prevent or reduce depopulation in very sparsely populated areas, the Member State concerned must demonstrate the risk of depopulation of the relevant area in the absence of the operating aid.

65. ~~**5.2.**~~ For operating aid, Member States commit to verifying that the beneficiary complies with its obligation to conduct an energy audit in the sense of Article 8 of Directive 2012/27/EU of the European Parliament and of the Council,[6] either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System, for example the EU eco-management and audit scheme (EMAS).[7] If the beneficiary is not covered by the obligation to conduct an energy audit under Article 8(4) of the Energy Efficiency Directive, Member States commit to verifying that it will conduct one within the first four years after their first application for aid, and then every four years thereafter, unless they carry out energy audits within the framework of certified Energy Management System or Environmental Management System.

66. Member States also commit to monitoring that beneficiaries covered by the obligation to conduct an energy audit under Article 8(4) of the Energy Efficiency Directive will implement the recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 5 years and that the costs of their investments are proportionate. Where the pay-back time for the relevant investments exceeds 5 years or where the costs of their investments are disproportionate, beneficiaries have to

a) reduce the carbon footprint of their electricity consumption, for example, through installing an on-site renewable energy generation facility (covering at least 50% of their electricity needs), through a carbon-free power purchase agreement; or alternatively

b) invest a significant share of at least 80% of the aid amount in projects that lead to substantial reductions of the installation's greenhouse gas emissions and well below the applicable benchmark used for free allocation in the EU Emissions Trading System.

5.2. Need for State intervention

~~65.~~67. In order to assess whether State aid is necessary to achieve the objective of common interest, it is necessary first to diagnose the problem to be addressed. State aid should be targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself. This holds especially in a context of scarce public resources.

~~66.~~68. State aid measures can indeed, under certain conditions, correct market

[6] 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).

[7] Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 342, 22. 12.2009, p. 1).

failures thereby contributing to the efficient functioning of markets and enhancing competitiveness. Furthermore, where markets provide efficient outcomes but these are deemed unsatisfactory from an equity or cohesion point of view, State aid may be used to obtain a more desirable, equitable market outcome.

~~67.~~69. As regards aid granted for the development of areas included in the regional aid map in accordance with the rules developed in section 5 of these guidelines, the Commission considers that the market is not delivering the expected cohesion objectives set out in the Treaty without state intervention. Therefore, aid granted in those areas should be considered ~~compatible with the internal market pursuant to Article 107(3)(a) and (c) of the Treaty~~necessary.

5.3. ~~5.3.~~ Appropriateness of regional aid

~~68.~~70. The notified aid measure must be an appropriate policy instrument to address the policy objective concerned. An aid measure will not be considered compatible if other less distortive policy instruments or other less distortive types of aid instrument make it possible to achieve the same positive contribution to regional development. In line with the Green Deal objectives, with Article 37 of the Charter of Fundamental Rights of the European Union, requiring that "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development", as well as Articles 11 and 7 of the TFEU, the term "less distortive" in this sense also has to be understood to imply that the State aid measure cannot be allowed to distort competition to the disadvantage of market participants that offer "less environmentally harmful" solutions to achieve the same outcome respectively "ensuring a higher level of environmental protection".

5.3.1. Appropriateness among alternative policy instruments

5.3.1.1. Investment aid schemes

~~69.~~71. Regional investment aid is not the only policy instrument available to Member States to support investment and job creation in disadvantaged regions. Member States can use other measures such as infrastructure development, enhancing the quality of education and training, or improvements in the business environment.

~~70.~~72. Member States must indicate why regional aid is an appropriate instrument to tackle the common objective of equity or cohesion when introducing an investment aid scheme.

~~71.~~73. If a Member State decides to put in place a sectoral aid scheme, it must demonstrate the advantages of such an instrument compared to a multi-_sectoral scheme or other policy options.

~~72.~~74. The Commission will in particular take account of any impact assessments of the proposed aid scheme that the Member State may make available. Likewise, the results of ex post evaluations as described in section 4 may be taken into account to assess the appropriateness of the proposed scheme.

5.3.1.2. Notifiable individual investment aid

~~73.~~75. The Member State must demonstrate how the development of the area concerned is better ensured by such aid than by aid under a scheme or other types of measures.

5.3.1.3. Operating aid schemes

~~74.~~76. The Member State must demonstrate that the aid is appropriate to achieve the objective of the scheme for the problems that the aid is intended to address. To demonstrate that the aid is appropriate, the Member State may calculate the aid amount ex ante as a fixed sum covering the expected additional costs over a given period, to incentivise undertakings to contain costs and develop their business in a more efficient manner over time[38].

5.3.2. Appropriateness among different aid instruments

~~75.~~77. Regional aid can be awarded in various forms. The Member State should however ensure that the aid is awarded in the form that is likely to generate the least distortions of trade and competition. In this respect, if the aid is awarded in forms that provide a direct pecuniary advantage (for example, direct grants, exemptions or reductions in taxes, social security or other compulsory charges, or the supply of land, goods or services at favourable prices, etc.), the Member State must demonstrate why other potentially less distortive forms of aid such as repayable advances or forms of aid that are based on debt or equity instruments (for example, low-interest loans or interest rebates, state guarantees, the purchase of a share-holding or an alternative provision of capital on favourable terms) are not appropriate.

~~76.~~78. The results of ex post evaluations as described in Section 6 may be taken into account to assess the appropriateness of the proposed aid instrument.

5.4. Incentive effect

5.4.1. Investment aid

~~77.~~79. Regional aid can only be found compatible with the internal market if it has incentive effect. Incentive effect is present when the aid changes the behaviour of an undertaking in a way that it engages in additional activity contributing to the development of an area, which it would not have engaged

[38] However, where future costs and revenue developments are surrounded by a high degree of uncertainty and there is a strong asymmetry of information, the public authority may also wish to adopt compensation models that are not entirely ex ante, but rather a mix of ex ante and ex post (for example, using claw backs such as to allow sharing of unanticipated gains).

in or would only have engaged in in a restricted or different manner or in another location without the aid. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.

~~78.~~80. The existence of incentive effect can be proven in two possible scenarios:

a) the aid gives an incentive to adopt a positive investment decision because an investment that would otherwise not be sufficiently profitable for the beneficiary anywhere can take place in the area concerned[39] (*scenario 1, investment decision*); or

b) the aid gives an incentive to locate a planned investment in the relevant area rather than elsewhere because it compensates for the net disadvantages and costs linked to a location in the area concerned (*scenario 2, location decision*).

~~79.~~81. If the aid does not change the behaviour of the beneficiary by stimulating (additional) investment in the area concerned, it can be considered that the same investment would take place in the region even without the aid. Such aid lacks incentive effect to achieve the regional objective and cannot be approved as compatible with the internal market.

~~80.~~82. However, for regional aid awarded through cohesion policy funds or the EAFRD in 'a' regions to investments necessary to achieve standards set by Union law, the aid may be considered to have incentive effect, if in absence of the aid, it would not have been sufficiently profitable for the beneficiary to make the investment in the area concerned, thereby leading to the closure of an existing establishment in that area.

~~81.~~83. Works on an individual investment can start only after submitting the application form for aid.

~~82.~~84. If works start before submitting the application form for aid, any aid awarded in respect of that individual investment will not be considered compatible with the internal market.

~~83.~~85. Member States must introduce a standard aid application form which contains, as a minimum, all information as listed in Annex V. In the application form, SMEs and large enterprises must explain counterfactually what would happen if they did not receive the aid, indicating which of the scenarios described in paragraph 2178 applies.

~~84.~~86. In addition, large enterprises must submit documentary evidence in support of the counterfactual described in the application form. SMEs are not subject to such obligation for non-notifiable aid granted under a scheme.

~~85.~~87. The granting authority must carry out a credibility check of the counterfactual and confirm that regional aid has the required incentive effect corresponding to one of the scenarios described in paragraph 78. A counterfactual is credible

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39 Such investments may create conditions allowing further investments that are viable without additional aid.

if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment.

~~86.~~88. In addition to the requirements of paragraphs 81 to 85, for notifiable individual aid, the Member State must provide clear evidence that the aid effectively has an impact on the investment choice or the location choice[40]. It must specify which scenario described in paragraph 78 applies. To allow a comprehensive assessment, the Member State must provide not only information concerning the aided project but also a comprehensive description of the counterfactual scenario, in which no aid is awarded to the beneficiary by any public authority in the EEA.

~~87.~~89. In *scenario 1*, the Member State could prove the existence of the incentive effect of the aid by providing company documents that show that the investment would not be sufficiently profitable without the aid.

~~88.~~90. In *scenario 2*, the Member State could prove the incentive effect of the aid by providing company documents showing that a comparison has been made between the costs and benefits of locating in the area concerned and those in alternative area(s). The Commission verifies whether such comparisons have a realistic basis.

~~89.~~91. The Member States are, in particular, invited to rely on official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents that are submitted to an investment committee and that elaborate on various investment scenarios, or documents provided to the financial institutions could help the Member States to demonstrate the incentive effect.

~~90.~~92. In this context, and in particular in *scenario 1*, the level of profitability can be evaluated by reference to methodologies which are standard practice in the particular industry concerned, and which may include methods to evaluate the net present value of the project (NPV)[41], the internal rate of return (IRR)[42] or the average return on capital employed (ROCE). The profitability of the project is to be compared with normal rates of return applied by the company in other investment projects of a similar kind. Where these rates are not available, the profitability of the project is to be compared with the cost of capital of the company as a whole or with the rates of return commonly observed in the industry concerned.

~~91.~~93. If the aid does not change the behaviour of the beneficiary by stimulating (additional) investment in the area concerned, there is no positive effect for

40 The counterfactual scenarios are described in paragraph 61.

41 The net present value of a project is the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital).

42 The internal rate of return is not based on accounting earnings in a given year, but takes into account the stream of future cash flows that the investor expects to receive over the entire lifetime of the investment. It is defined as the discount rate for which the NPV of a stream of cash flows equals zero.

the region. Therefore, aid will not be considered compatible with the internal market in cases where it appears that the same investment would take place in the region even without the aid having been granted.

5.4.2. Operating aid schemes

~~92.~~94. For operating aid schemes, the incentive effect of the aid will be considered to be present if it is likely that, in the absence of aid, the level of economic activity in the area or region concerned would be significantly reduced due to the problems that the aid is intended to address.

~~93.~~95. The Commission will therefore consider that the operating aid induces additional economic activity in the areas or regions concerned, if the Member State has demonstrated the existence and substantial nature of those problems in the area concerned (see paragraphs 61 to 64).

5.5. Proportionality of the aid amount (aid limited to the minimum)

5.5.1. Investment aid

~~94.~~96. The amount of the regional aid must be limited to the minimum needed to induce additional investment or activity in the area concerned.

~~95.~~97. To ensure predictability and a level playing field, the Commission applies maximum aid intensities[43] for investment aid.

~~96.~~98. For an initial investment project, the maximum aid intensity and maximum aid amount[44] (adjusted aid amount[45] and the related reduced aid intensity in case of a large investment project) must be established by the granting authority when awarding the aid or notifying the aid to the Commission, whichever is earlier.

~~97.~~99. Since large investment projects are likely to give rise to greater distortions of competition and trade, for these projects the aid amount must not exceed the adjusted aid amount.

~~98.~~100. When the initial investment is part of a single investment project and that single investment project is a large investment project, the aid amount for the single investment project must not exceed the adjusted aid amount.

~~99.~~101. The maximum aid intensities serve a dual purpose.

~~100.~~102. First, for notifiable schemes, these maximum aid intensities serve as safe harbours for SMEs and green bonus projects: as long as the aid intensity remains below the maximum permissible, the aid is deemed proportionate.

~~101.~~103. Second, for all other cases, the maximum aid intensities are used as a cap to the net-extra costs approach described in paragraphs 103 and 104.

~~102.~~104. As a general rule, the Commission will consider notifiable individual aid to be limited to the minimum, if the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the

43 See subsection 5.4 on regional aid maps.
44 Expressed as GGE.
45 Ibid.

counterfactual in the absence of aid[46], with maximum aid intensities as a cap. Likewise, in the case of investment aid granted to large enterprises under notified schemes, Member States must ensure that the aid amount is limited to the minimum on the basis of a 'net-extra cost approach', with maximum aid intensities as a cap.

~~103.~~105. For *scenario 1* situations (investment decisions) the aid amount should therefore not exceed the minimum necessary to render the project sufficiently profitable, for example to increase its IRR beyond the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind or, when available, to increase its IRR beyond the cost of capital of the company as a whole or beyond the rates of return commonly observed in the industry concerned.

~~104.~~106. In *scenario 2* situations (location incentives), the aid amount should not exceed the difference between the net present value of the investment in the target area with the net present value in the alternative location. All relevant costs and benefits must be taken into account, including for example administrative costs, transport costs, training costs not covered by training aid and also wage differences. However, where the alternative location is in the EEA, subsidies in that other location are not to be taken into account.

~~105.~~107. Calculations used for the analysis of the incentive effect can also be used to assess whether the aid is proportionate. The Member State must demonstrate the proportionality on the basis of documentation such as that referred to in paragraph 89.

~~106.~~108. Investment aid may be awarded concurrently under several regional aid schemes or cumulated with ad hoc aid, provided that the total aid from all sources does not exceed the maximum permissible aid intensity per project that must be calculated in advance by the first granting authority. Cumulation checks must be carried out both when the aid is granted and when the aid is paid out[47]. Where the Member State allows State aid under one scheme to be cumulated with State aid under other schemes, it must specify, in each scheme, the method by which it will ensure compliance with the ~~the~~ conditions set out in this paragraph.

~~107.~~109. For an initial investment linked to European Territorial Cooperation (ETC) projects meeting the criteria of the Regulation laying down the specific provisions for the support of the European Regional Development Fund to the ETC cooperation goal[48], the aid intensity which applies to the area in which the initial investment is located will apply to all beneficiaries participating in

46 When comparing counterfactual scenarios, the aid is to be discounted by the same factor as the respective investment and counterfactual scenarios.

47 The requirement that the maximum permissible aid intensity per project must be calculated in advance by the first granting authority does not apply when the aid is granted via automatic tax scheme(s). In this situation, cumulation checks are in principle not possible when the aid is granted and should be carried out when the aid is paid out.

48 [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 Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p. 259)]

the project. If the initial investment is located in two or more assisted areas, the maximum aid intensity for the initial investment will be the one applicable in the assisted area where the highest amount of the eligible costs are incurred. Initial investments carried out by large undertakings in ‘c’ areas may only benefit from regional aid in the context of ETC projects if they are initial investments in favour of new economic activity and if they contribute to the Union’s Digital strategy or the European Green Deal.

5.5.2. *Operating aid schemes*

~~108.~~110. The Member State must demonstrate that the level of the aid is proportionate to the problems that the aid is intended to address.

~~109.~~111. In particular, the following conditions must be fulfilled:

a) the aid must be determined in relation to a predefined set of eligible costs that are fully attributable to the problems that the aid is intended to address, as demonstrated by the Member State;

b) the aid must be limited to a certain proportion of those predefined set of eligible costs and must not exceed those costs;

c) the aid amount per beneficiary must be proportional to the level of the problems actually experienced by each beneficiary.

~~110.~~112. As regards aid to reduce certain specific difficulties faced by SMEs in ‘a’ areas, the level of the aid must be progressively reduced over the duration of the scheme[49].

5.6. Avoidance of undue negative effects on competition and trade

~~111.~~113. For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objectives of common interest.

5.6.1. *General considerations*

~~112.~~114. Two main potential distortions of competition and trade may be caused by regional aid. These are product market distortions and location effects. Both types may lead to allocative inefficiencies (undermining the economic performance of the internal market) and to distributional concerns (distribution of economic activity across regions).

~~113.~~115. One potentially harmful effect of State aid is that it prevents the market mechanism from delivering efficient outcomes by rewarding the most efficient producers and putting pressure on the least efficient to improve, restructure or exit the market. A substantial capacity expansion induced by State aid in an underperforming market might in particular unduly distort competition, as the creation or maintenance of overcapacity could lead to a squeeze on profit margins, a reduction of competitors’ investments or even the exit of competitors from the market. This might lead to a situation where competitors that would otherwise be able to stay on the market are forced out

49 Including when operating aid schemes are notified to prolong existing aid measures.

of the market. It may also prevent undertakings from entering or expanding in the market and it may weaken incentives for competitors to innovate. This results in inefficient market structures which are also harmful to consumers in the long run. Further, the availability of aid may induce complacent or unduly risky behaviour on the part of potential beneficiaries. The long term effect on the overall performance of the sector is likely to be negative.

~~114.~~116. Aid may also have distortive effects in terms of increasing or maintaining substantial market power on the part of the beneficiary. Even where aid does not strengthen substantial market power directly, it may do so indirectly, by discouraging the expansion of existing competitors or inducing their exit or discouraging the entry of new competitors.

~~115.~~117. Apart from distortions on the product markets, regional aid by nature also affects the location of economic activity. Where one area attracts an investment due to the aid, another area loses out on that opportunity. These negative effects in the areas adversely affected by aid may be felt through lost economic activity and lost jobs including those at the level of subcontractors. It may also be felt in a loss of positive externalities (for example, clustering effect, knowledge spillovers, education and training, etc.).

~~116.~~118. The geographical specificity of regional aid distinguishes it from other forms of horizontal aid. It is a particular characteristic of regional aid that it is intended to influence the choice made by investors about where to locate investment projects. When regional aid off-sets the additional costs stemming from the regional handicaps and supports additional investment in assisted areas without attracting it away from other equally developed or worse off assisted areas, it contributes not only to the development of the region, but also to cohesion and ultimately benefits the whole Union. With regard to the potential negative location effects of regional aid, these are already limited to a certain degree by regional aid maps, which define exhaustively the areas where regional aid may be granted, taking account of the equity and cohesion policy objectives, and the maximum permissible aid intensities. However, an understanding of what would have happened in the absence of the aid remains important to appraise the actual impact of the aid on the cohesion objective.

5.6.2. *Manifest negative effects on competition and trade*

~~117.~~119. The Commission identifies a number of situations where the negative effects of the regional investment aid manifestly outweigh any positive effects, meaning that the aid cannot be declared compatible with the internal market.

5.6.2.1. Creating overcapacity in a market in absolute decline

~~118.~~120. As pointed out in paragraph 113, in order to assess the negative effects of the aid, the Commission will take account of the additional production capacity created by the project when the market is underperforming.

~~119.~~121. When investments adding production capacity in a market are made possible because of State aid, there is a risk that production or investment in other regions of the EEA may be negatively affected. This is particularly likely if the capacity increase exceeds market growth or takes place in a market facing overcapacity.

~~120.~~122. Therefore, where the project leads to the creation or reinforcement of overcapacity in a market which is structurally in absolute decline (i.e. the market shows a negative growth rate)[50], the Commission considers it to be a negative effect, which is unlikely to be compensated by any positive effect. This app~~p~~lies in particular for scenario 1 cases (investment decisions).

~~121.~~123. For scenario 2 cases (location decisions) where the investment would happen in any event in the same geographical market or, exceptionally, takes place in different geographical markets, but where sales targets the same geographic market, the aid only influences the location decision, provided it is limited to the minimum necessary to change the location decision. In this situation, additional capacity would be added by the investment project on the relevant geographical market independently of it. Therefore, possible outcomes in terms of overcapacity would in principle be the same regardless of the aid. However, where the alternative investment location is in a different geographical market, and the aid leads to the creation of overcapacity on a market structurally in absolute decline, the conclusions of paragraph 120 equally apply.

5.6.2.2. Counter-cohesion effects

~~122.~~124. As pointed out in paragraphs 115 and 116, in the assessment of the negative effects of the aid, the Commission needs to take account of its effects on the location of economic activity.

~~123.~~125. In scenario 2 cases (location decisions), where without aid the investment would have been located in a region with a regional aid intensity[51] which is higher or the same as in the target region this will constitute a negative effect that is unlikely to be compensated by any positive effect because it runs counter to the very rationale of regional aid.

5.6.2.3. Relocation

~~124.~~126. When appraising notifiable measures, the Commission will request all necessary information to consider whether the State aid would result in a substantial loss of jobs in existing locations within the EEA. In such a situation, and where the investment serves to allow the beneficiary to relocate an activity to the target area, if there is a causal link between the aid and the relocation, this will constitute a negative effect that is unlikely to be compensated by any positive elements.

5.6.3. Investment aid schemes

~~125.~~127. Investment aid schemes must not lead to significant distortions of competition and trade. In particular, even where distortions may be considered limited at an individual level (provided all conditions for investment aid are fulfilled), on a cumulative basis schemes might still lead to high levels of distortions.

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50 The Commission will assess this both in terms of volume and value and will take into account the business cycle situation.

51 To verify this, the Commission will use the standard applicable aid ceiling in ‘c’ areas bordering ‘a’ areas regardless of the increased aid intensities in accordance with paragraph 183.

Such distortions might concern the output markets by creating or aggravating a situation of overcapacity or creating, increasing or maintaining the substantial market power of some recipients in a way that will negatively affect dynamic incentives. Aid available under schemes might also lead to a significant loss of economic activity in other areas of the EEA. In case of a scheme focussing on certain sectors, the risk of such distortions is even more pronounced.

~~126.~~128. Therefore, the Member State has to demonstrate that these negative effects will be limited to the minimum taking into account, for example, the size of the projects concerned, the individual and cumulative aid amounts, the expected beneficiaries as well as the characteristics of the targeted sectors. In order to enable the Commission to assess the likely negative effects, the Member State could submit any impact assessment at its disposal as well as ex-post evaluations carried out for similar predecessor schemes.

~~127.~~129. When awarding aid under a scheme to individual projects, the granting authority must verify and confirm that the aid does not result in the manifest negative effects described in paragraph 117. This verification can be based on the information received from the beneficiary when applying for aid and on the declaration made in the standard application form for aid where the alternative location in absence of aid should be indicated.

5.6.4. Notifiable individual investment aid

~~128.~~130. In appraising the negative effects of individual aid, the Commission distinguishes between the two counterfactual scenarios described in paragraphs 103 and 104.

5.6.4.1. Scenario 1 cases (investment decisions)

~~129.~~131. In scenario 1 cases, the Commission places particular emphasis on the negative effects linked with the build-up of overcapacity in declining markets, the prevention of exit, and the notion of substantial market power. These negative effects are described in paragraphs 130 to 139 and must be counterbalanced with the positive effects of the aid. However, if it is established that the aid would result in the manifest negative effects described in paragraph 120, the aid cannot be found compatible with the internal market because it is unlikely to be compensated by any positive element.

~~130.~~132. In order to identify and assess the potential distortions of competition and trade, Member States should provide evidence permitting the Commission to identify the product markets concerned (that is to say, products affected by the change in behaviour of the aid beneficiary) and to identify the competitors and customers/consumers affected. The product concerned is normally the product covered by the investment project[52]. When the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product. The relevant product market includes the product concerned and its substitutes considered

[52] Where an investment project involves the production of several different products, each of the products needs to be considered.

to be such either by the consumer (by reason of the product's characteristics, prices, or intended use) or by the producer (through flexibility of the production installations).

~~131.~~133. The Commission will use various criteria to assess these potential distortions, such as market structure of the product concerned, performance of the market (declining or growing market), process for selection of the aid beneficiary, entry and exit barriers and product differentiation.

~~132.~~134. A systematic reliance on State aid by an undertaking might indicate that the undertaking is not able to withstand competition on its own or that it enjoys undue advantages compared to its competitors.

~~133.~~135. The Commission distinguishes two main sources of potential negative effects on product markets:

a) cases of capacity expansion which leads to or deteriorates an existing situation of overcapacity, especially in a declining market;

b) cases where the aid beneficiary holds substantial market power.

~~134.~~136. In order to evaluate whether the aid may serve to create or maintain inefficient market structures, the Commission will take into account the additional production capacity created by the project and whether the market is underperforming.

~~135.~~137. Where the market in question is growing, there is normally less reason to be concerned that the aid will negatively affect dynamic incentives or will unduly impede exit or entry.

~~136.~~138. More concern is warranted when markets are in decline. In this respect the Commission distinguishes between cases for which, from a long-term perspective, the relevant market is structurally in decline (that is to say, shows a negative growth rate), and cases for which the relevant market is in relative decline (that is to say, shows a positive growth rate, but does not exceed a benchmark growth rate).

~~137.~~139. Underperformance of the market will normally be measured compared to the EEA GDP over the last three years before the start of the project (benchmark rate); it can also be established on the basis of projected growth rates in the coming three to five years. Indicators may include the foreseeable future growth of the market concerned and the resulting expected capacity utilisation rates, as well as the likely impact of the capacity increase on competitors through its effects on prices and profit margins.

~~138.~~140. In certain cases, assessing the growth of the product market in the EEA may not be appropriate to entirely assess the effects of aid, in particular if the geographic market is worldwide. In such cases, the Commission will consider the effect of the aid on the market structures concerned, in particular, its potential to crowd out producers in the EEA.

~~139.~~141. In order to evaluate the existence of substantial market power, the Commission will take into account the position of the beneficiary over a period of time before receiving the aid and the expected market position after finalising the investment. The Commission will take account of market shares of the beneficiary, as well as of market shares of its competitors and other relevant factors, including, for example the market structure by looking at the concentration in the market, possible barriers to entry[53], buyer power[54] and barriers to expansion or exit.

5.6.4.2. Scenario 2 cases (location decisions)

~~140.~~142. If the counterfactual analysis suggests that without the aid the investment would have gone ahead in another location (scenario 2) which belongs to the same geographical market considering the product concerned, and if the aid is proportional, possible outcomes in terms of overcapacity or substantial market power would in principle be the same regardless of the aid. In such cases, the positive effects of the aid are likely to outweigh the limited negative effects on competition. However, where the alternative location is in the EEA, the Commission is particularly concerned with negative effects linked with the alternative location and therefore if the aid results in the manifest negative effects described in paragraph 124 the aid cannot be found compatible with the internal market because it is unlikely to be compensated by any positive element.

5.6.5. Operating aid schemes

~~141.~~143. If the aid is necessary and proportional to achieve the common objective described in Subsection 5.1.3, the negative effects of the aid are likely to be compensated by positive effects. However, in some cases, the aid may result in changes to the structure of the market or to the characteristics of a sector or industry which could significantly distort competition through barriers to market entry or exit, substitution effects, or displacement of trade flows. In those cases, the identified negative effects are unlikely to be compensated by any positive effects.

5.7. Transparency

~~142.~~144. The Member State concerned shall ensure the publication in the European Commission's transparency award module ([55]) or on a comprehensive State aid website, at national or regional level of:

(a) the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it;

(b) the information on each individual aid award granted under these guidelines, referring to the standardized format laid down in the Annex VI.

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53 These entry barriers include legal barriers (in particular intellectual property rights), economies of scale and scope, access barriers to networks and infrastructure. Where the aid concerns a market where the aid beneficiary is an incumbent, possible barriers to entry may exacerbate the potential substantial market power wielded by the aid beneficiary and thus the possible negative effects of that market power.

54 Where there are strong buyers in the market, it is less likely that an aid beneficiary can increase prices. vis-à-vis these strong buyers.

55 https://webgate.ec.europa.eu/competition/transparency/public?lang=en

As regards aid granted to European Territorial Cooperation projects, the information referred to in this paragraph shall be placed on the website of the Member State in which the Managing Authority concerned, as defined in Article 21 of Regulation (EC) No 1299/2013 of the European Parliament and of the Council, is located. Alternatively, the participating Member States may also decide that each of them shall provide the information relating to the aid measures within their territory on the respective websites.

Member States shall organize their comprehensive State aid websites, on which the information laid down in this paragraph is to be published, in such a way as to allow easy access to the information. Information shall be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. Access to the website shall be allowed to the general public without restrictions. No prior user registration shall be required to access the website.

~~143.~~145. For schemes in the form of tax advantages, the conditions set out in paragraph 142(b) shall be considered fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):

0 -0,5;

0,5-1;

1-2;

2-5;

5-10;

10-30;

30-60;

60-100;

100-250; and

250 and more.

~~144.~~146. The information referred to in paragraph 142(b) shall be published within 6 months from the date the aid was granted, or for aid in the form of tax advantage, within 1 year from the date the tax declaration is due[56]. In case of unlawful but compatible aid, Member States will be required to ensure the publication of this information ex post within 6 months from the date of the Commission's decision declaring the aid compatible. In order to allow the enforcement of State aid rules under the Treaty on the Functioning of the European Union, the information shall be available for at least 10 years from the date on which the aid was granted.

[56] In case no formal requirement for an annual declaration exists, the 31st of December of the year for which the aid was granted will be considered as the granting date for encoding purposes.

~~145.~~147. The Commission shall publish on its website the links to the State aid websites referred to in paragraph 142.

6. EVALUATION

146. To further ensure that distortion of competition and trade is limited, the Commission may require that aid schemes as identified in paragraph 147 are subject to an ex post evaluation. Evaluations will be carried out for schemes where the potential distortion of competition and trade is particularly high, that is to say, that may risk significantly restricting or distorting competition if their implementation is not reviewed in due time.

147. Ex post evaluation will be required for schemes with large aid budgets, or containing novel characteristics, or when significant market, technology or regulatory changes are foreseen, and in any event for schemes the State aid budget or accounted expenditures of which exceed EUR 150 million in any given year or EUR 750 million over their total duration, that is to say the combined duration of the scheme and any predecessor scheme covering a similar objective and geographical area, starting from [expected date of entry into force of the guidelines]. Given the objectives of the evaluation, and in order not to impose a disproportionate burden on Member States and on smaller aid projects, the ex post evaluation requirement is only necessary for aid schemes the total duration of which exceeds three years, starting from [expected date of entry into force of the guidelines]. .

148. The ex post evaluation requirement may be waived with respect to aid schemes that are an immediate successor of a scheme covering a similar objective and geographical area that has been subject to an evaluation, delivered a final evaluation report in compliance with the evaluation plan approved by the Commission and has not generated any negative findings. Any scheme the final evaluation report of which is not in compliance with the approved evaluation plan must be suspended with immediate effect.

149. The evaluation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, in particular the necessity and the effectiveness of the aid measure in the light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade.

150. The Member State must notify a draft evaluation plan, which will be an integral part of the Commission's assessment of the scheme, in the following cases:

a) together with the aid scheme if its State aid budget exceeds EUR 150 million in any given year or EUR 750 million over its total duration, and;
b) within 30 working days after a significant modification increasing the budget of the scheme to over EUR 150 million in any given year or 750 million over the total duration of the scheme, and;

c) within 30 working days after recording in official accounts expenditures in excess of EUR 150 million in the previous year,

The draft evaluation plan must be in accordance with the common methodological principles provided by the Commission[57]. The evaluation plan approved by the Commission must be made public.

151. The ex post evaluation must be carried out by ~~an expert~~two experts independent from the aid granting authority and established in other regions, on the basis of the evaluation plan. Each evaluation must include at least one interim and one final evaluation report. Both reports must be made public within 1 month of their communication to the aid granting authorities.

152. The final evaluation report must be submitted to the Commission in due time to allow for the assessment of the possible prolongation of the aid scheme and at the latest 9 months before its expiry. The precise scope and arrangements for each evaluation will be defined in the decision approving the aid scheme. Any subsequent aid measure with a similar objective must describe to the Commission how the results of the evaluation have been taken into account.

7. REGIONAL AID MAPS

153. In this section, the Commission lays down the criteria for identifying the areas that fulfil the conditions of Articles 107(3)(a) and (c) of the Treaty. The areas that fulfil those conditions and which a Member State wishes to designate as 'a' or 'c' areas must be identified in a regional aid map which must be notified to the Commission and approved by the Commission before regional aid can be awarded to undertakings located in the designated areas. The maps must also specify the maximum aid intensities applicable in those areas.

7.1. Population coverage eligible for regional aid

154. Given that the award of regional State aid derogates from the general prohibition of State aid laid down in Article 107(1) of the Treaty, the Commission considers that the combined population of 'a' and 'c' areas in the Union must be lower than that of the non-designated areas. The total coverage of those designated areas should therefore be less than 50 % of the Union's population.

155. In the Guidelines on national regional aid for 2014-2020[58] the overall coverage of the 'a' and 'c' areas was set at 47 % of the EU28 population. The Commission considers that this initial level of overall population coverage is still appropriate.

156. Accordingly, the overall coverage ceiling of the 'a' and 'c' areas should be set at 47 % of the EU27 population as from 2022 onwards[59].

57 Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final, or any of its successors.

58 OJ C 209, 23.7.2013, p. 1.

59 This ceiling is set using Eurostat population data for 2018. The ceiling will correspond to 47.00 % of the EU27_2020 – (European Union - 27 countries (from 2020)).

7.2. The derogation in Article 107(3)(a)

157. Article 107(3)(a) of the Treaty provides that 'aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation' may be considered to be compatible with the internal market. According to the Court of Justice, 'the use of the words "abnormally" and "serious" in Article (107)(3)(a) shows that the exemption concerns only areas where the economic situation is extremely unfavourable in relation to the [Union] as a whole'[60].

158. The Commission considers that the conditions of Article 107(3)(a) of the Treaty are fulfilled in NUTS 2 regions[61] that have a gross domestic product (GDP) per capita below or equal to 75 % of the Union's average[62].

159. Accordingly, a Member State may designate the following areas as 'a' areas:

a) NUTS 2 regions whose GDP per capita in purchasing power standards (PPS)[63] is below or equal to 75 % of the EU27 average (based on the average of the last three years for which Eurostat data are available[64]);

b) the outermost regions.

160. The eligible 'a' areas are set out by Member State in Annex I.

7.3. The derogation in Article 107(3)(c)

161. Article 107(3)(c) of the Treaty provides that 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest' may be considered to be compatible with the internal market. According to the Court of Justice, '[t]he exemption in Article (107)(3)(c) […] permits the development of certain areas without being restricted by the economic conditions laid down in Article [107](3)(a), provided such aid "does not adversely affect trading conditions to an extent contrary to the common interest"'. That provision gives the Commission power to authorise aid intended to further the economic development of areas

60 Judgment of 14 October 1987 in case 248/84 *Germany* v *Commission* (ECLI:EU:C:1987:437, paragraph 19); judgment of 14 January 1997 in case C-169/95 *Spain* v *Commission* (ECLI:EU:C:1997:10, paragraph 15); and judgment of 7 March 2002 in case C-310/99 *Italy* v *Commission* (ECLI:EU:C:2002:143, paragraph 77).

61 Commission Delegated Regulation 2019/1755 of 8 August 2019 amending the Annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS), OJ L 270, 24.10.2019. The data used in these guidelines are based on this NUTS 2021 nomenclature.

62 The reference to regions with a GDP per capita below 75 % of the [Community] average was introduced by the Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid (OJ C 212, 12.8.1988, p. 2).

63 In all subsequent references to GDP per capita, GDP is measured in PPS.

64 The data cover the period 2016-2018. In all subsequent references to GDP per capita in relation the EU27 average, data are based on the average of Eurostat regional data for 2016-2018.

of a Member State which are disadvantaged in relation to the national average'[65].

162. The total coverage ceiling for 'c' areas in the Union ('"c" coverage') is obtained by subtracting the population of the eligible 'a' areas in the Union from the overall coverage ceiling laid down in paragraph 156156.

163. There are two categories of 'c' areas:

a) areas that fulfil certain pre-established conditions and that a Member State may therefore designate as 'c' areas without any further justification ('predefined "c" areas');

b) areas that a Member State may, at its own discretion, designate as 'c' areas provided that the Member State demonstrates that such areas fulfil certain socioeconomic criteria ('non-predefined "c" areas').

7.3.1. Predefined 'c' areas

7.3.1.1. Specific allocation of 'c' coverage for predefined 'c' areas

164. The Commission considers that each Member State concerned must have sufficient 'c' coverage to be able to designate as 'c' areas the regions that were 'a' areas in the regional aid map during the period 2017-2020[66] but no longer qualify as 'a' areas.

165. The Commission also considers that each Member State concerned must have sufficient 'c' coverage to be able to designate as 'c' areas the regions that have a low population density.

166. Accordingly, the following areas will be considered as predefined 'c' areas:

a) former 'a' areas: NUTS 2 regions that were designated as 'a' areas during the period 2017-2020;

b) sparsely populated areas: NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 regions with less than 12.5 inhabitants per km² (based on Eurostat data on population density for 2018).

167. The specific allocation of predefined 'c' coverage is set out by Member State in Annex I. This specific population allocation may only be used to designate predefined 'c' areas.

7.3.1.2. Designation of predefined 'c' areas

168. A Member State may designate as 'c' areas the predefined 'c' areas referred to in paragraph 166.

169. For sparsely populated areas, a Member State should in principle designate NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 regions with less than 12.5 inhabitants per km². However, a Member State may designate

[65] Judgment of 14 October 1987 in case 248/84 *Germany* v *Commission* (ECLI:EU:C:1987:437, paragraph 19).

[66] The list of 'a' areas was amended in 2016 (see Communication from the Commission amending Annex I to the Guidelines on regional aid for 2014-2020) (Mid-term review of the regional aid maps) (OJ C 231, 25.06.2016, p. 1)).

parts of NUTS 3 regions with less than 12.5 inhabitants per km² or other contiguous areas adjacent to those NUTS 3 regions, provided that the areas designated have less than 12.5 inhabitants per km² and that their designation does not exceed the specific allocation of 'c' coverage referred to in paragraph 168.

7.3.2. Non-predefined 'c' areas

7.3.2.1. Method for the allocation of non-predefined 'c' coverage among Member States

170. The total coverage ceiling for non-predefined 'c' areas in the Union is obtained by subtracting the population of the eligible 'a' areas and of the predefined 'c' areas from the overall coverage ceiling laid down in paragraph 156. The non-predefined 'c' coverage is allocated among the Member States by applying the method set out in Annex II.

7.3.2.2. Safety net and minimum population coverage

171. To ensure continuity in the regional aid maps and a minimum scope of action for all Member States, the Commission considers that each Member State should not lose more than half of its total coverage compared to the period 2017-2020 and that each Member State should have a minimum population coverage.

172. Accordingly, by way of derogation from the overall coverage ceiling laid down in paragraph 156, the 'c' coverage for each Member State concerned is increased as necessary so that:

a) the total 'a' and 'c' coverage of each Member State concerned is not reduced by more than 50 % compared to the period 2017-2020[67];

b) each Member State has a population coverage of at least 7.5 % of its national population[68].

173. The non-predefined 'c' coverage, including the safety net and the minimum population coverage, is set out by Member State in Annex I.

7.3.2.3. Designation of non-predefined 'c' areas

174. The Commission considers that the criteria used by Member States for designating 'c' areas should reflect the diversity of situations in which the award of regional aid may be justified. The criteria should therefore address certain socioeconomic, geographical or structural problems likely to be encountered in 'c' areas and should provide sufficient safeguards that the award of regional State aid will not affect trading conditions to an extent contrary to the common interest.

175. Accordingly, a Member State may designate as 'c' areas the non-predefined 'c' areas defined on the basis of the following criteria:

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[67] This element of the safety net applies to Ireland and to Malta.

[68] This minimum population coverage applies to Denmark and to Luxembourg.

a) Criterion 1: contiguous areas of at least 100 000 inhabitants[69] located in NUTS 2 or NUTS 3 regions that have:

   i. a GDP per capita below or equal to the EU27 average, or;

   ii. an unemployment rate above or equal to 115 % of the national average[70].

b) Criterion 2: NUTS 3 regions of less than 100 000 inhabitants that have:

   i. a GDP per capita below or equal to the EU27 average, or;

   ii. an unemployment rate above or equal to 115 % of the national average.

c) Criterion 3: islands or contiguous areas characterised by similar geographical isolation (for example, peninsulas or mountain areas) that have:

   i. a GDP per capita below or equal to the EU27 average[71], or;

   ii. an unemployment rate above or equal to 115 % of the national average[72], or;

   iii. less than 5 000 inhabitants.

d) Criterion 4: NUTS 3 regions, or parts of NUTS 3 regions that form contiguous areas, that are adjacent to an 'a' area or that share a land border with a country outside the EEA or the European Free Trade Association (EFTA).

e) Criterion 5: contiguous areas of at least 50 000 inhabitants[73] that are undergoing major structural change or are in serious relative decline, provided that such areas are not located in NUTS 3 regions or contiguous areas that fulfil the conditions to be designated as predefined areas or under Criteria 1 to 4[74].

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69 This population threshold will be reduced to 50 000 inhabitants for Member States that have a non-predefined 'c' coverage of less than 1 million inhabitants or to 10 000 inhabitants for Member States whose national population is below 1 million inhabitants.

70 For unemployment, calculations should be based on regional data published by the national statistical office, using the average of the last three years for which such data are available (at the moment of the notification of the regional aid map). Except as otherwise indicated in these guidelines, the unemployment rate in relation to the national average is calculated on this basis.

71 To determine if such islands or contiguous areas have a GDP per capita below or equal to the EU27 average, the Member State may refer to data provided by its national statistical office or other recognised sources.

72 To determine if such islands or contiguous areas have an unemployment rate above or equal to 115 % of the national average, the Member State may refer to data provided by its national statistical office or other recognised sources.

73 This population threshold will be reduced to 25 000 inhabitants for Member States that have a non-predefined 'c' coverage of less than 1 million inhabitants, to 10 000 inhabitants for Member States whose total population is below 1 million inhabitants, or to 5 000 inhabitants for islands or contiguous areas characterised by similar geographical isolation.

74 For the purpose of applying Criterion 5, the Member State must demonstrate that the area is undergoing major structural change or is in serious relative decline by comparing the areas concerned with the

176. For the purpose of applying the criteria set out in paragraph 175, the notion of contiguous areas refers to whole local administrative unit 2 (LAU 2)[75] areas or to a group of whole LAU 2 areas[76]. A group of LAU 2 areas will be considered to form a contiguous area if each of those areas in the group shares an administrative border with another area in the group[77].

177. Compliance with the population coverage allowed for each Member State will be determined on the basis of the most recent data on the total resident population of the areas concerned, as published by the national statistical office.

7.4. Maximum aid intensities applicable to regional investment aid

178. The Commission considers that the maximum aid intensities applicable to regional investment aid must take into account the nature and scope of the disparities between the levels of development of the different regions in the Union. The aid intensities should therefore be higher in 'a' areas than in 'c' areas.

7.4.1. Maximum aid intensities in 'a' areas

179. The aid intensity in 'a' areas must not exceed:

a) 50 % in NUTS 2 regions whose GDP per capita is below or equal to 55 % of the EU27 average;

b) 40 % in NUTS 2 regions whose GDP per capita is between or equal to 55 % and 65 % of the EU27 average;

c) 30 % in NUTS 2 regions with a GDP per capita above 65 % of the EU27 average.

180. The maximum aid intensities laid down in paragraph 179 may be increased by up to 20 percentage points in outermost regions that have a GDP per capita below or equal to 75 % of the EU27 average or by up to 10 percentage points in other outermost regions. The same increase shall be available for green bonus projects. It should generally be available in 'a' areas; in the outermost regions mentioned in Sentence 1, the two increases may be cumulated.

7.4.2. Maximum aid intensities in 'c' areas

181. The aid intensity must not exceed:

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situation of other areas in the same Member State or in other Member States on the basis of socioeconomic indicators concerning structural business statistics, labour markets, household accounts, education, or other similar indicators. For this purpose, the Member State may refer to data provided by its national statistical office or other recognised sources. For Just Transition Areas, this justification is not required as the structural change is considered to be demonstrated as part of the respective Just Transition Plan.

75 The Member State may refer to LAU 1 areas in place of LAU 2 areas if those LAU 1 areas have a smaller population than the LAU 2 area which they form part of.

76 The Member State may nevertheless designate parts of an LAU 2 area (or LAU 1 area), provided that the population of the LAU area concerned exceeds the minimum population required for contiguous areas under Criteria 1 or 5 (including the reduced population thresholds for those criteria) and that the population of the parts of that LAU area is at least 50 % of the minimum population required under the applicable criterion.

77 In the case of islands, administrative borders include maritime borders with other administrative units of the Member State concerned.

a) 20 % in sparsely populated areas and in areas (NUTS 3 regions or parts of NUTS 3 regions) that share a land border with a country outside the EEA or the EFTA;

b) 15 % in non-predefined ‘c’ areas;

c) 10 % in non-predefined 'c' areas that have a GDP per capita above 100 % of the EU27 average AND an unemployment below 100% of the EU27 average.

These aid intensities may be doubled for green bonus projects.

182. In the former ‘a’ areas the aid intensity of 15 % may be increased by up to 5 percentage points until 31 December 2024. The same increase shall be available for green bonus projects.

183. If a ‘c’ area is adjacent to an ‘a’ area, the maximum aid intensity in the NUTS 3 regions or parts of NUTS 3 regions within that ‘c’ area which are adjacent to the ‘a’ area may be increased as necessary so that the difference in aid intensity between the two areas does not exceed 15 percentage points. Such 15 percentage points’ difference must be calculated taking into account the maximum aid intensities in an ‘a’ area and disregarding any increase for green bonus projects in that area.

7.4.3. ~~*7.4.3.*~~ *Increased aid intensities for SMEs*

184. The maximum aid intensities laid down in subsections 7.4.1 and 7.4.2 may be increased by up to 20 percentage points for small enterprises or by up to 10 percentage points for medium-sized enterprises[78].

7.5. Notification and declaration of compatibility

185. Following the publication of these guidelines in the *Official Journal of the European Union*, each Member State should notify to the Commission a single regional aid map applicable from 1 January 2022 to 31 December 2027. Each notification should include the information specified in the form in Annex III.

186. The Commission will examine each notified regional aid map on the basis of these guidelines and will adopt a decision approving the regional aid map for the Member State concerned. Each regional aid map will be published in the *Official Journal* and will constitute an integral part of these guidelines.

7.6. Amendments

7.6.1. Population reserve

187. On its own initiative, a Member State may decide to establish a reserve of national population coverage consisting of the difference between the population coverage ceiling for that Member State, as allocated by the Commission[79], and the coverage used for the ‘a’ and ‘c’ areas designated in its regional aid map.

188. If a Member State has decided to establish such a reserve, it may, at any time, use the reserve to add new ‘c’ areas in its map until its national coverage ceiling is reached. For this purpose, the Member State may refer to the most recent socioeconomic data provided by Eurostat or by its national statistical office or other recognised sources. The population of the ‘c’ areas concerned

[78] The increased aid intensities for SMEs will not apply to aid awarded for large investment projects.

[79] See Annex I.

should be calculated on the basis of the population data used for establishing the initial map.

189. The Member State must notify the Commission each time it intends to use its population reserve to add new ‘c’ areas prior to putting into effect such amendments.

7.6.2. Mid-term review

190. A mid-term review of the regional aid maps, taking into account updated statistics, will take place in 2024. By June 2024, the Commission will adopt the rules of that mid-term review.

8. APPLICABILITY OF REGIONAL AID RULES

191. The Commission will apply the principles set out in these guidelines for assessing the compatibility of all notifiable regional aid intended to be awarded after 31 December 2021.

192. Notifications of regional aid schemes or of aid measures intended to be awarded after 31 December 2021 cannot be considered complete until the Commission has adopted a decision approving the regional aid map for the Member State concerned in accordance with the arrangements described in subsection 7.5.

193. The Commission considers that the implementation of these guidelines will lead to some changes in the rules applicable to regional aid in the Union. Therefore, it appears necessary to review the continuing justification for and effectiveness of all existing regional aid schemes, including both investment aid and operating aid schemes, with a duration beyond 2021.

194. For these reasons, the Commission proposes the following appropriate measures to Member States pursuant to Article 108(1) of the Treaty:

a) Member States must limit the application of all existing regional aid schemes to aid intended to be awarded by 31 December 2021 at the latest;

b) Member States must amend other existing horizontal aid schemes providing specific treatment for aid to projects in assisted areas in order to ensure that aid to be awarded after 31 December 2021 complies with the regional aid map applicable on the date the aid is awarded;

c) Member States should confirm their acceptance of the measures proposed in points (a) and (b) by 31 July 2021 at the latest.

9. REPORTING AND MONITORING

195. In accordance with Council Regulation (EC) No 659/1999[80] and Commission Regulation (EC) No 794/2004[81], Member States must submit annual reports to the Commission.

196. Member States must maintain detailed records regarding all aid measures. Such records must contain all information necessary to establish that the conditions regarding eligible costs and maximum aid intensities have been fulfilled. These records must be maintained for 10 years from the date of award of the aid and must be provided to the Commission upon request.

10. REVISION

197. The Commission may decide to amend these guidelines at any time if this should be necessary for reasons associated with competition policy or to take account of other Union policies and international commitments or for any other justified reason.

80 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 83, 27.3.1999, p. 1).

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

Annex I – Regional aid coverage by Member States for 2022-2027

Belgium	NUTS regions	GDP per capita[82]	Percentage of national population[83]
‘a’ areas	BE34 Prov. Luxembourg (BE)	73.00	2.50 %
Non-predefined ‘c’ areas	—	—	21.80 %
Total population coverage 2022-2027	—	—	24.30 %

Bulgaria	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	BG31 ЧСэСЄЂмӨЃӨþСЁ / Severozapaden	31.67	10.66 %
	BG32 ЧСэСЄСЁ ЊСЁІЄӨЭСЁ / Severen tsentralen	34.33	11.24 %
	BG33 ЧСэСЄЂρмІЂЋСЁ / Severoiztochen	40.33	13.26 %
	BG34 сÞЂρмІЂЋСЁ / Yugoiztochen	43.00	14.74 %
	BG42 сМСЁ ЊСЁІЄӨЭСЁ / Yuzhen tsentralen	35.00	20.13 %
Predefined ‘c’ areas (former ‘a’ areas)	BG41 сÞЂмӨЃӨþСЁ / Yugozapaden	81.33	29.97 %
Total population coverage 2022-2027	—	—	100.00 %

Czech Republic	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	CZ04 Severozápad	63.67	10.50 %
	CZ05 Severovýchod	75.00	14.22 %
	CZ07 Střední Morava	73.33	11.43 %

82 Measured in PPS, three-year average for 2016-2018 (EU27 = 100).
83 Based on Eurostat population data for 2018.

-	CZ08 Moravskoslezsko	74.33	11.33 %
Predefined ‘c’ areas (former ‘a’ areas)	CZ02 Střední Čechy	82.67	12.81 %
-	CZ03 Jihozápad	78.00	11.52 %
-	CZ06 Jihovýchod	82.67	15.94 %
Total population coverage 2022-2027	—	—	87.76 %

Denmark	NUTS regions	GDP per capita	Percentage of national population
Non-predefined ‘c’ areas	—	—	7.50 %
Total population coverage 2022-2027	—	—	7.50 %

Germany	NUTS regions	GDP per capita	Percentage of national population
Non-predefined ‘c’ areas	—	—	16.73 %
Total population coverage 2022-2027	—	—	16.73 %

Estonia	NUTS regions	GDP- per capita	Percentage of national population
Predefined ‘c’ areas (former ‘a’ areas)	EE00 Eesti	79.33	100.00 %
Total population coverage 2022-2027	—	—	100.00 %

Ireland	NUTS regions	GDP per capita	Percentage of national population
Non-predefined ‘c’ areas	—	—	25.64 %
Total population coverage 2022-2027	—	—	25.64 %

Greece	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	EL41 Βσλεδκ Αδΰαέκ / Voreio	49.00	2.01 %

	Aigaio		
	EL42 Νστδκ Αδΰαέκ / Notio Aigaio	73.67	3.19 %
	EL43 Κλάτβ / Kriti	58.33	5.91 %
	EL51 Αθατκζδεά Μαεεδκθέα, ΘλΪεβ / Anatoliki Makedonia, Thraki	47.67	5.59 %
	EL52 Κεθτλδεά Μαεεδκθέα / Kentriki Makedonia	53.67	17.47 %
	EL53 Δντδεά Μαεεδκθέα / Dytiki Makedonia	59.67	2.50 %
	EL54 ΉΗЦεδλκμ / Ipeiros	48.67	3.11 %
	EL61 Θεσσαζέα / Thessalia	52.67	6.71 %
	EL62 Ισθδα ΝβσδΪ / Ionia Nisia	63.33	1.90 %
	EL63 Δντδεά ΕζζΪδα / Dytiki Elláda	50.33	6.12 %
	EL64 □τελεΪ ΕζζΪδα / Sterea Elláda	62.33	5.18 %
	EL65 ΠεζκЦσθθβσκμ / Peloponnisos	56.67	5.36 %
Non-predefined ‘c’ areas	—	—	16.14 %
Total population coverage 2022-2027			81.21 %

Spain	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	ES42 Castilla-La Mancha	72.33	4.35 %
	ES43 Extremadura	66.67	2.28 %
	ES61 Andalucía	68.33	17.99 %
	ES63 Ciudad de Ceuta	72.67	0.18 %
	ES64 Ciudad de Melilla	67.00	0.18 %
	ES70 Canarias	75.00	4.68 %
Predefined ‘c’ areas (former ‘a’ areas)	ES62 Región de Murcia	76.67	3.17 %
Predefined ‘c’ areas (sparsely populated areas)	ES242 Teruel	—	0.29 %
	ES417 Soria	—	0.19 %

Non-predefined ‘c’ areas	—	—	30.81 %
Total population coverage 2022-2027	—	—	64.12 %

France	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	FRY1 Guadeloupe	73.00	0.63 %
	FRY2 Martinique	77.00	0.55 %
	FRY3 Guyane	50.33	0.42 %
	FRY4 La Réunion	70.00	1.28 %
	FRY5 Mayotte	32.67:	0.40 %:
	Saint-Martin*	:	:
Non-predefined ‘c’ areas	—	—	26.79 %
Total population coverage 2014-2020	—	—	30.06 %

* Saint-Martin is an outermost region but is not included in the 2021 NUTS nomenclature. To determine the maximum aid intensity applicable, France may refer to data provided by its national statistical office or other recognised sources.

Croatia	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	HR02 Panonska Hrvatska	41.58	27.02 %
	HR03 Jadranska Hrvatska	60.33	33.48 %
	HR06 Sjeverna Hrvatska	48.43	20.04 %
Predefined ‘c’ areas (former ‘a’ areas)	HR05 Grad Zagreb	109.24	19.46 %
Total population coverage 2022-2027	—	—	100.00 %

Italy	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	ITF2 Molise	69.33	0.51 %
	ITF3 Campania	62.67	9.62 %
	ITF4 Puglia	63.33	6.68 %

	ITF5 Basilicata	74.67	0.94 %
	ITF6 Calabria	57.33	3.23 %
	ITG1 Sicilia	59.67	8.30 %
	ITG2 Sardegna	70.33	2.72 %
Non-predefined ‘c’ areas	—	—	9.33 %
Total population coverage 2022-2027	—	—	41.33 %

Cyprus	NUTS regions	GDP per capita	Percentage of national population
Non-predefined ‘c’ areas	—	—	46.20 %
Total population coverage 2014-2020	—	—	46.20 %

Latvia	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	LV00 Latvija	67.00	100.00 %
Total population coverage 2022-2027	—	—	100.00 %

Lithuania	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	LT02 Vidurio ir vakarų Lietuvos regionas	65.00	71.16 %
Predefined ‘c’ areas (former ‘a’ areas)	LT01 Sostinės regionas	113.67	28.84 %
Total population coverage 2022-2027	—	—	100.00 %

Luxembourg	NUTS regions	GDP per capita	Percentage of national population
Non-predefined ‘c’ areas	—	—	7.50 %
Total population coverage 2022-2027	—	—	7.50 %

Hungary	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	HU12 Pest	55.00	13.00 %
	HU21 Közép-Dunántúl	65.33	10.81 %
	HU22 Nyugat-Dunántúl	72.67	10.10 %
	HU23 Dél-Dunántúl	47.33	9.03 %
	HU31 Észak-Magyarország	47.67	11.57 %
	HU32 Észak-Alföld	44.33	14.89 %
	HU33 Dél-Alföld	50.00	12.69 %
Total population coverage 2022-2027	—	—	82.09 %

Malta	NUTS regions	GDP per capita	Percentage of national population
Non-predefined ‘c’ areas	—	—	50.00 %
Total population coverage 2022-2027	—	—	50.00 %

Netherlands	NUTS regions	GDP per capita	Percentage of national population
Non-predefined ‘c’ areas	—	—	8.39 %
Total population coverage 2022-2027	—	—	8.39 %

Austria	NUTS regions	GDP per capita	Percentage of national population
Non-predefined ‘c’ areas	—	—	20.94 %
Total population coverage 2022-2027	—	—	20.94 %

Poland	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	PL21 Małopolskie	63.67	8.84 %

	PL22 Śląskie	72.33	11.82 %
	PL42 Zachodniopomorskie	58.00	2.64 %
	PL43 Lubuskie	51.00	2.65 %
	PL52 Opolskie	55.33	2.57 %
	PL61 Kujawsko-Pomorskie	56.33	5.41 %
	PL62 Warmińsko-Mazurskie	49.00	3.73 %
	PL63 Pomorskie	67.67	6.06 %
	PL71 Łódzkie	65.00	6.43 %
	PL72 Świętokrzyskie	50.00	3.24 %
	PL81 Lubelski	63.67	1.85 %
	PL82 Podkarpackie	40.33	5.54 %
	PL34 Podlaskie	49.67	3.08 %
	PL92 Mazowiecki regionalny	59.33	6.12 %
Predefined 'c' areas (former 'a' areas)	PL41 Wielkopolskie	75.67	9.09 %
	PL51 Dolnośląskie	77.00	7.55 %
Non-predefined 'c' areas	—	—	0.77 %
Total population coverage 2022-2027	—	—	92.84 %

Portugal	NUTS regions	GDP per capita	Percentage of national population
'a' areas	PT11 Norte	65.67	34.76 %
	PT16 Centro (PT)	67.33	21.63 %
	PT18 Alentejo	72.67	6.89 %
	PT20 Região Autónoma dos Açores	69.00	2.37 %
	PT30 Região Autónoma da Madeira	76.00	2.47 %
Non-predefined 'c' areas	—	—	1.97 %
Total population coverage 2022-2027	—	—	70.09 %

Romania	NUTS regions	GDP per capita	Percentage of national

			population
‘a’ areas	RO11 Nord-Vest	58.33	13.13 %
	RO12 Centru	60.00	11.93 %
	RO21 Nord-Est	39.67	16.48 %
	RO22 Sud-Est	52.67	12.37 %
	RO31 Sud – Muntenia	49.33	15.14 %
	RO41 Sud-Vest Oltenia	46.67	9.96 %
	RO42 Vest	66.00	9.15 %
Non-predefined ‘c’ areas	—	—	1.11 %
Total population coverage 2022-2027	—	—	89.26 %

Slovenia	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	SI01 Vzhodna Slovenija	70.67	52.71 %
Non-predefined ‘c’ areas	—	—	9.71 %
Total population coverage 2022-2027	—	—	62.42 %

Slovakia	NUTS regions	GDP per capita	Percentage of national population
‘a’ areas	SK02 Západné Slovensko	66.67	33.55 %
	SK03 Stredné Slovensko	58.00	24.60 %
	SK04 Východné Slovensko	52.00	29.82 %
Total population coverage 2022-2027	—	—	87.97 %

Finland	NUTS regions	GDP per capita	Percentage of national population
Predefined ‘c’ areas (sparsely populated areas)	FI1D1 Etelä-Savo	—	2.67 %
	FI1D2 Pohjois-Savo	—	4.46 %
	FI1D3 Pohjois-Karjala	—	2.95 %
	FI1D5 Keski-Pohjanmaa	—	1.24 %

	FI1D7 Lappi	—	3.24 %
	FI1D8 Kainuu	—	1.34 %
	FI1D9 Pohjois-Pohjanmaa	—	7.43 %
Non-predefined ‘c’ areas	—	—	3.29 %
Total population coverage 2022-2027	—	—	26.63 %

Sweden	NUTS regions	GDP per capita	Percentage of national population
Predefined ‘c’ areas (sparsely populated areas)	SE312 Dalarnas län	—	2.81 %
	SE321 Västernorrlands län	—	2.42 %
	SE322 Jämtlands län	—	1.27 %
	SE331 Västerbottens län	—	2.63 %
	SE332 Norrbottens län	—	2.48 %
Non-predefined ‘c’ areas	—	—	9.32 %
Total population coverage 2022-2027	—	—	20.94 %

Annex II – Method to be used for the allocation of non-predefined ‘c’ coverage among Member States

The Commission will determine the non-predefined ‘c’ coverage for each Member State concerned by applying the following method:

(1) For each Member State, the Commission will identify those NUTS 3 regions in the Member State concerned that are not situated in any of the following areas:

- eligible ‘a’ areas set out in Annex I;
- former ‘a’ areas set out in Annex I;
- sparsely populated areas set out in Annex I.

(2) Within the NUTS 3 regions identified under Step 1, the Commission will identify those that have either:

– a GDP per capita[84] below or equal to the national GDP per capita disparity threshold[85], or;

– an unemployment[86] rate above or equal to the national unemployment disparity threshold[87], or above or equal to 150 % of the national average, or;

– a GDP per capita below or equal to 90 % of the EU27 average, or;

– an unemployment rate above or equal to 125 % of the EU27 average.

(3) The allocation of non-predefined ‘c’ coverage for Member State *i* (A_i) is determined according to the following formula (expressed as a percentage of the EU27 population):

$A_i = p_i / P \times 100$

where:

p_i is the population[88] of the NUTS 3 regions in Member State *i* identified under Step 2.

P is the sum of the population of the NUTS 3 regions in the EU27 identified under Step 2.

84 All GDP per capita referred to in this annex are based on the average of the last three years for which Eurostat data are available, that is to say 2016-2018 for GDP per capita.

85 The national GDP per capita disparity threshold for Member State *i* (TG_i) is determined according to the following formula (expressed as a percentage of national GDP per capita):
$(TG)_i = 85 \times ((1 + 100 / g_i) / 2)$
where: g_i is the GDP per capita of Member State *i*, expressed as a percentage of the EU27 average.

86 All unemployment data referred to in this annex are based on the average of the last three years for which Eurostat data are available, that is to say 2017-2019. However, these data do not contain information at NUTS 3 level and therefore unemployment data for the NUTS 2 region in which those NUTS 3 regions are situated are used.

87 The national unemployment rate disparity threshold for Member State *i* (TU_i) is determined according to the following formula (expressed as a percentage of the national unemployment rate):
$(TU)_i = 115 \times ((1 + 100 / u_i) / 2)$
where: u_i is the national unemployment rate of Member State *i*, expressed as a percentage of the EU27 average.

88 Population figures for NUTS 3 regions are established on the basis of the population data used by Eurostat to calculate the regional GDP per capita for 2018.

Annex III – Form for providing information on the regional aid maps

(1) Member States must provide information for each of the following categories of areas proposed for designation, if applicable:

- ‘a’ areas;
- former ‘a’ areas;
- sparsely populated areas;
- non-predefined areas ‘c’ areas designated on the basis of Criterion 1;
- non-predefined areas ‘c’ areas designated on the basis of Criterion 2;
- non-predefined areas ‘c’ areas designated on the basis of Criterion 3;
- non-predefined areas ‘c’ areas designated on the basis of Criterion 4;
- non-predefined areas ‘c’ areas designated on the basis of Criterion 5;

(2) Under each category, the Member State concerned must provide the following information for each proposed area:

- identification of the area (using the NUTS 2 or NUTS 3 region code of the area, the LAU 2 or LAU 1 code of the areas that form the contiguous area or other official denominations of the administrative units concerned);
- the proposed aid intensity in the area for the period 2022-2027 or, for former ‘a’ areas, for the periods 2022-2024 and 2025-2027 (indicating any increase of aid intensity as under paragraphs 180, 182 or 183 and 184, if applicable);
- the total resident population of the area, as stated in paragraph 177.

(3) For the sparsely populated areas and the non-predefined areas designated on the basis of Criteria 1-5, a Member State must provide adequate proof that each of the applicable conditions laid down in paragraphs 169 and 175-177 is fulfilled.

Annex IV – Definition of the steel sector

For the purpose of these guidelines, 'steel sector' means the production of one or more of the following products:

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

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

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

d) cold finished products: tinplate, terneplate, blackplate, galvanized sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;

e) tubes: all seamless steel tubes, welded steel tubes with a diameter of over 406.4 mm.

Annex V – Information to be included in the application form for regional investment aid

1.Information about the aid beneficiary:

- Name, registered address of main seat, main sector of activity (NACE Code),
- Declaration that the firm is not in difficulty as defined under the rescue and restructuring guidelines
- Declaration specifying aid (both de minimis and State aid) already received for other projects in the last 3 years in the same NUTS 3 area where the new investment will be located. Declaration specifying regional aid received or to be received for the same project by other granting authorities.
- Declaration specifying whether the company has closed a same or similar activity in the EEA two years preceding the date of this application form
- Declaration specifying whether the company has the intention to close down such an activity at the moment of aid application within a period of two years after the investment to be subsidised is completed.
- For aid granted under a scheme: non relocation declaration and commitment

2. Information about the project/activity to be supported:

- Short description of the project/activity.
- Short description of expected positive effects for the area concerned (for example, number of jobs created or safeguarded, project's contribution to the green and digital transition of the regional economy, R&D&I activities, training activities, creation of a cluster)
- Relevant legal basis (national, EU or both)
- Planned starting date and -end date of the project/activity
- Location(s) of the project

3. Information about the financing of the project/activity:

- Investments and other costs linked to it, cost benefit analysis for notified aid measures
- Total eligible costs
- Aid amount needed to execute project/activity
- Aid intensity

4. Information about the need for aid and its expected impact:

- Short explanation of the need for aid and its impact on the investment decision or location decision. Alternative investment or location in absence of aid shall be indicated.
- Declaration of absence of an irrevocable agreement between the beneficiary and contractors to conduct the project
- Explanation on how the measure avoids that State aid measures would lead to environmental harm, in line with the Green Deal.

Annex VI – Provisions for the publication of information as laid down in paragraph 142

The following information on individual awards as laid down in paragraph 142(b) of that Section shall be published:

—Identity of the individual beneficiary ([89])

- Name
- Beneficiary's identifier

— Type of beneficiary undertaking at the time of granting:

- SME
- Large undertaking

— Region in which the beneficiary is located, at NUTS level II or below

—The principal economic sector in which the beneficiary has its activities, at NACE group level ([90])

—Aid element, and, where different, the nominal amount of aid, expressed as full amount in national currency ([91])

— Aid instrument ([92]):

- Grant/Interest rate subsidy/Debt write-off
- Loan/Repayable advances/Reimbursable grant
- Guarantee
- Tax advantage or tax exemption
- Risk finance
- Other (please specify)

— Date of award and the date of publication

— Objective of the aid

— Identity of the granting authority or authorities

—Where applicable, name of the entrusted entity, and the names of the selected financial intermediaries

— Reference of the aid measure[93]

89 With the exception of business secrets and other confidential information in duly justified cases and subject to the Commission's agreement (Commission communication of 1.12.2003 on professional secrecy in State aid decisions, C(2003) 4582 (OJ C 297, 9.12.2003, p. 6)).

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

91 Gross grant equivalent, or where applicable, the amount of the investment. For operating aid, the annual amount of aid per beneficiary can be provided. For fiscal schemes this amount can be provided by the ranges set out in paragraph 143. The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of a tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

92 If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

93 As provided by the Commission under the electronic procedure referred to in paragraph 21.