



Brussels, **XXX**
[...](2017) **XXX**

COMMISSION REGULATION (EU) .../...

of **XXX**

amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs

(Text with EEA relevance)

COMMISSION REGULATION (EU) .../...

of **XXX**

amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid¹, and in particular Article 1(1)(a)(xiv) and Article 1(1)(b) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) Commission Regulation (EU) No 651/2014² declares that certain categories of aid are compatible with the internal market and exempted from the requirement that they must be notified to the Commission before they are granted. Regulation (EU) No 651/2014 announced that the Commission intended to review the scope of that Regulation with a view to including other categories of aid, and in particular aid for port and airport infrastructure, once sufficient case experience had been acquired.
- (2) In the light of the experience acquired by the Commission and in order to simplify and clarify the State aid rules, as well as to reduce the administrative burden of notifying straightforward State aid measures and to allow the Commission to focus on the potentially most distortive cases, aid for port and airport infrastructure should be included in the scope of Regulation (EU) No 651/2014.
- (3) Investment aid to regional airports with average annual passenger traffic of up to three million passengers can improve both the accessibility of certain regions and local development, depending on the specificities of each airport. Such investment aid therefore supports the priorities of the Europe 2020 strategy contributing to further economic growth and objectives of common Union interest. The experience acquired in the application of the Guidelines on State aid to airports and airlines³ shows that investment aid to regional airports does not give rise to undue distortion of trade and

¹ OJ L 248, 24.9.2015, p. 1.

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

³ OJ C 99, 4.4.2014, p. 3.

competition, provided certain conditions are met. Investment aid to regional airports should therefore be covered by the block exemption in Regulation (EU) No 651/2014, provided that those conditions are fulfilled. It would not be appropriate to establish a notification threshold in terms of the amount of aid, since the competitive impact of an aid measure depends mainly on the size of the airport and not on the amount of aid.

- (4) The conditions for the exemption of investment aid from the notification requirement should aim at limiting distortions of competition that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, investment aid should fulfil two conditions. The aid intensity should not exceed a maximum permissible aid intensity, which varies according to the size of the airport. In addition, the aid amount should not exceed the difference between the eligible costs and the operating profit of the investment. For very small airports of up to 200 000 passengers per annum, the investment aid should only be required to fulfil one of those conditions. The compatibility conditions should ensure open and non-discriminatory access to the infrastructure. The exemption should not apply to investment aid granted to airports located in the vicinity of an existing airport from which scheduled air services are operated, because aid to such airports entails a higher risk of distortion of competition and should therefore be notified to the Commission, with the exception of aid granted to very small airports with up to 200 000 passengers per annum, which is unlikely to result in significant distortion of competition.
- (5) Operating aid to very small airports with up to 200 000 passengers per annum does not give rise to undue distortion of trade and competition, provided certain conditions are met. The compatibility conditions should, in particular, ensure that the aid amount does not exceed the operating losses and a reasonable profit and that there is open and non-discriminatory access to the infrastructure. In addition, the aid should not be granted under the condition that the airport operator concludes arrangements with one or more airlines relating to airport charges, marketing payments or other financial aspects of the airline's operations at that airport. Arrangements between an airport which has public resources at its disposal and an airline may, under certain circumstances, constitute State aid to the airline concerned⁴, and such aid should remain fully subject to the notification requirement of Article 108(3) of the Treaty.
- (6) Maritime ports are of strategic importance for achieving the smooth functioning of the internal market and the strengthening of economic, social and territorial cohesion, as set out, inter alia, in the Europe 2020 Strategy and in the Commission White Paper "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system"⁵. As highlighted in the Communication "Ports: an engine for growth"⁶, the effective operation of ports in all Union maritime regions requires efficient public and private investment. Investments are necessary, in particular, for the adaptation of access infrastructure to ports and of port infrastructure to the increased size and complexity of the fleet, to the use of alternative fuel infrastructure and to stricter requirements on environmental performance. The lack of high quality port infrastructure results in congestion and extra costs for shippers, transport operators and consumers.

⁴ See in particular section 3.5 of the Guidelines on State aid to airports and airlines.

⁵ COM(2011)144.

⁶ COM(2013)295.

- (7) The development of inland ports and their integration into multi-modal transport is a major objective of the Union's transport policy. The Union rules explicitly aim at reinforcing transport intermodality and the shift towards more environmentally-friendly modes of transport such as rail and sea/inland waterway transport.
- (8) The conditions for the exemption of aid to ports from the notification requirement should aim at limiting distortions of competition that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, the aid should fulfil two conditions. The aid intensity should not exceed a maximum permissible aid intensity, which for maritime ports varies according to the size of the investment project. In addition, the aid amount should not exceed the difference between the eligible costs and the operating profit of the investment, except for very small aid amounts, for which a simplified approach is appropriate in order to reduce the administrative burden. The compatibility conditions should also ensure that any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure is assigned on a competitive, transparent, non-discriminatory and unconditional basis, without prejudice to the Union rules on public procurement and concessions, where applicable. Equal and non-discriminatory access to the infrastructure should also be ensured.
- (9) Investments included in the work plans of the Core Network Corridors set up by Regulation (EU) No 1315/2013 of the European Parliament and of the Council⁷ are projects of common interest with a particular strategic interest for the Union. Maritime ports that are part of those networks constitute the entry and exit points of goods being transported in and out of the Union. Inland ports that are part of those networks are key factors enabling the multimodality of the network. Investments aiming to improve the performance of those ports should therefore benefit from a higher notification threshold.
- (10) In the light of the experience acquired in the application of Regulation (EU) No 651/2014 and Commission Regulation (EU) No 702/2014⁸, it is also appropriate to adapt certain provisions of those Regulations.
- (11) In particular, as regards regional operating aid schemes for outermost regions, the application of different rules for the compensation of additional transport costs and of other additional costs has proven difficult in practice and not appropriate to address the structural handicaps referred to in Article 349 of the Treaty, remoteness and insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, and the provisions should therefore be replaced by a method that applies to all additional costs. The implementation of regional investment and operating aid measures in outermost regions which, amongst others, benefit undertakings active in the fishery sector should be in line with the Union's obligations resulting from international agreements to which it is a contracting party. Therefore, such regional investment and operating aid measures should not benefit vessels engaged in illegal,

⁷ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

⁸ Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

unreported and unregulated fishing or contribute to overfishing or to an increase in the fishing capacity of vessels.

- (12) In view of the limited negative effects on competition of aid for culture and heritage conservation and of aid for sport and multifunctional recreational infrastructures, the notification thresholds for aid in those areas should be increased.
- (13) In order to simplify the calculation of eligible costs under Regulation (EU) No 651/2014 and Regulation (EU) No 702/2014 for operations that are at least partly financed through a Union fund that allows the use of simplified cost options, the provisions relating to eligible costs should be adapted.
- (14) Under the Horizon 2020 SME-instrument as referred in Article 22(2) of Regulation (EU) No 1291/2013⁹, projects can receive a Commission Seal of Excellence quality label. Such projects, given their limited aid amounts of maximum EUR 2.5 million per project and the fact that they are targeting exclusively SMEs, can be exempted from the notification requirement in accordance with the rules of Regulation (EU) No 651/2014.
- (15) Regulation (EU) No 651/2014 and Regulation (EU) No 702/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 1 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (k) and (l) are replaced by the following:

"(k) aid for sport and multifunctional recreational infrastructure;

(l) aid for local infrastructures;"

(ii) the following points (m) and (n) are added:

"(m) aid for regional airports;

(n) aid for ports.";

(b) in paragraph 3, the first subparagraph is replaced by the following:

"This Regulation shall not apply to:

(a) aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council* with the exception of training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, aid for disadvantaged workers and workers with disabilities, regional investment aid in outermost regions and regional operating aid schemes;

(b) aid granted in the primary agricultural production sector, with the exception of regional investment aid in outermost regions, regional operating aid schemes, aid for consultancy in

⁹ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and workers with disabilities;

(c) aid granted in the sector of processing and marketing of agricultural products, in the following cases:

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

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

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

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

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

** Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24).";

(c) paragraph 4 is amended as follows:

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

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

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

"(c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters, start-up aid schemes and regional operating aid schemes, provided those schemes do not treat undertakings in difficulty more favourably than other undertakings.";

(2) Article 2 is amended as follows:

(a) point 39 is replaced by the following:

"(39) 'operating profit' means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made;"

(b) point 42 is replaced by the following:

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

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

(c) point 48 is replaced by the following:

"(48) 'sparsely populated areas' means NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 regions with less than 12.5 inhabitants per km² or areas which are recognized by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;"

(d) the following point 48a is inserted:

"(48a) 'very sparsely populated areas' means NUTS 2 regions with less than 8 inhabitants per km² or areas which are recognized by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;"

(e) point 55 is replaced by the following:

"(55) 'areas eligible for operating aid' means an outermost region referred to in Article 349 of the Treaty, a sparsely populated area or a very sparsely populated area.";

(f) the following point 61a is inserted:

"(61a) 'relocation' means a transfer of the same or 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;"

(g) after point 143 the following titles and points (144) to (165) are added:

"Definitions for Aid for regional airports

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

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

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

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

(148) 'average annual passenger traffic' means a figure determined on the basis of the inbound and outbound passenger traffic during the two financial years preceding that in which the aid is granted;

(149) 'centralised ground handling infrastructure' means infrastructure which is normally operated by the airport manager and put at the disposal of the various providers of ground

handling services active at the airport in exchange for remuneration, excluding equipment owned or operated by the providers of ground handling services;

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

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

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

(153) ‘regional airport’ means an airport with average annual passenger traffic of up to 3 million passengers;

Definitions for Aid for ports

(154) ‘port’ means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators in the port;

(155) ‘maritime port’ means a port for, principally, the reception of sea-going vessels;

(156) ‘inland port’ means a port other than a maritime port, for the reception of inland waterway vessels;

(157) ‘port infrastructure’ means infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues;

(158) ‘port superstructure’ means surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services;

(159) ‘access infrastructure’ means any type of infrastructure necessary to ensure access and entry from land or sea and river by users to a port, or in a port, such as roads, rail tracks, channels and locks;

(160) ‘dredging’ means the removal of sediments from the bottom of the waterway access to a port, or in a port;

(161) ‘alternative fuel infrastructure’ means a fixed, mobile or offshore port infrastructure allowing a port to supply vessels with energy sources such as electricity, hydrogen, biofuels as defined in point (i) of Article 2 of Directive 2009/28/EC, synthetic and paraffinic fuels, natural gas, including biomethane, in gaseous form (compressed natural gas and liquefied natural gas) and liquefied petroleum gas which serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport and which have the potential to contribute to its decarbonisation and enhance the environmental performance of the transport sector;

(162) ‘vessels’ mean floating structures, whether self-propelled or not, with one or more surface displacement hulls;

(163) ‘sea-going vessels’ mean vessels other than those which navigate solely or mainly in inland waterways or in waters within, or closely adjacent to, sheltered waters;

(164) 'inland waterway vessels' mean vessels intended solely or mainly for navigation on inland waterways or in waters within, or closely adjacent to, sheltered waters;

(165) 'infrastructure for the collection of ship-generated waste and cargo residues' means fixed, floating or mobile port facilities capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council***.

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

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

*** Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p. 81).";

(3) Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

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

"(z) for investment aid for culture and heritage conservation: EUR 150 million per project; operating aid for culture and heritage conservation: EUR 75 million per undertaking per year;"

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

"(bb) for investment aid for sport and multifunctional recreational infrastructures: EUR 30 million or the total costs exceeding EUR 100 million per project; operating aid for sport infrastructure: EUR 2 million per infrastructure per year;"

(iii) the following points (dd), (ee) and (ff) are added:

"(dd) for aid for regional airports: the aid intensities and aid amounts laid down in Article 56a;

(ee) for aid for maritime ports: eligible costs of EUR 130 million per project (or EUR 150 million per project in a maritime port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council*); as regards dredging a project is defined as all dredging carried out within one calendar year;

(ff) for aid for inland ports: eligible costs of EUR 40 million per project (or EUR 50 million per project in an inland port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013); as regards dredging a project is defined as all dredging carried out within one calendar year.

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

(4) in Article 5(2), the following point (k) is added:

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

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

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

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

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

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

(6) Article 7 is amended as follows:

(a) in paragraph 1, the following sentence is added:

"The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council*, provided that the operation is at least partly financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision.

* Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).";

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

"Aid payable in the future, including aid payable in several instalments, shall be discounted to its value at the moment it is granted.";

(c) paragraph 4 is deleted;

(7) in Article 8, the following paragraph 7 is added:

"7. By way of derogation from paragraphs 1 to 6, in determining whether the ceilings for regional operating aid in outermost regions, as set out in Article 15(4), are respected, only regional operating aid in outermost regions implemented under this Regulation shall be taken into account.";

(8) Article 12 is replaced by the following:

Article 12

Monitoring

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

2. In the case of schemes under which fiscal aid is granted automatically, such as those based on tax declarations of the beneficiaries, and where there is no ex ante verification that all compatibility conditions are met for each beneficiary, Member States shall regularly verify, at

least ex post and on a sample basis, that all compatibility conditions are met, and draw the necessary conclusions. Member States shall maintain detailed records of the verifications for at least 10 years from the date of the controls.

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

(9) Article 13 is replaced by the following:

"Article 13

Scope of regional aid

This Section shall not apply to:

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

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

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

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

(10) Article 14 is amended as follows:

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

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

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

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

(c) the following paragraphs 16 and 17 are added:

"16. The beneficiary shall confirm 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 give a commitment that it will not do so up to a period of two years after the initial investment for which aid is requested is completed.

17. In the fisheries and aquaculture sector, aid shall not be granted to undertakings that have committed one or more of the infringements set out in Article 10(1)(a) to (d) and Article 10(3)

of Regulation (EU) No 508/2014 of the European Parliament and of the Council* and for operations of Article 11 of that Regulation.

* Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1)."

(11) Article 15 is replaced by the following:

"Article 15

Regional operating aid

1. Regional operating aid schemes in outermost regions, sparsely populated areas and very sparsely populated areas shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. In sparsely populated areas, the regional operating aid schemes shall compensate for the additional transport costs of goods which have been produced in areas eligible for operating aid, as well as additional transport costs of goods that are further processed in those areas, under the following conditions:

(a) the aid is objectively quantifiable in advance on the basis of a fixed sum or per tonne /kilometre ratio or any other relevant unit;

(b) the additional transport costs are calculated on the basis of the journey of the goods inside the national border of the Member State concerned using the means of transport which results in the lowest costs for the beneficiary.

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

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

(a) the beneficiaries have their economic activity in the area concerned;

(b) the annual aid amount per beneficiary under all operating aid schemes does not exceed 20% of the annual labour costs incurred by the beneficiary in the area concerned.

4. In outermost regions, the operating aid schemes shall 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, where the beneficiaries have their economic activity in an outermost region provided that the annual aid amount per beneficiary under all operating aid schemes implemented under this Regulation does not exceed one of the following percentages:

(a) 35% of the gross value added annually created by the beneficiary in the outermost region concerned;

(b) 40% of the annual labour costs incurred by the beneficiary in the outermost region concerned;

(c) 30% of the annual turnover of the beneficiary realised in the outermost region concerned.";

(12) in Article 21, paragraph 16 is amended as follows:

(a) The introductory phrase is replaced by the following:

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

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

"(b) in the case of loans and quasi-equity investments structured as debt, the nominal amount of the instrument is taken into account in calculating the maximum investment amount for the purposes of paragraph 9;"

(13) in Article 22, paragraph 2 is replaced by the following:

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

(a) it has not taken over the activity of another enterprise;

(b) it has not yet distributed profits;

(c) it has not been formed through a merger.

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

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

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

"1. Aid for research and development projects, including projects having received a Seal of Excellence quality label under the Horizon 2020 SME-instrument, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.";

(15) in Article 31(3), point (b) is replaced by the following:

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

(16) in Article 52, the following paragraph 2a is inserted:

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

(17) Article 53 is amended as follows:

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

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

(b) paragraph 8 is replaced by the following:

"8. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 6 and 7.";

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

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

(18) in Article 54(4), the second subparagraph is replaced by the following:

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

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

(19) in Article 55, paragraph 12 is replaced by the following:

"12. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 10 and 11.";

(20) The following sections 14 and 15 are inserted after Article 56:

"SECTION 14

Aid for regional airports

Article 56a

Aid for regional airports

1. Investment aid to an airport shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in paragraphs 3 to 14 of this Article and in Chapter I are fulfilled.

2. Operating aid to an airport shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in paragraphs 3, 4, 10 and 15 to 18 of this Article and in Chapter I are fulfilled.

3. The airport shall be open to all potential users. In the case of physical limitation of capacity, the allocation shall take place on the basis of pertinent, objective, transparent and non-discriminatory criteria.

4. The aid shall not be granted for the relocation of existing airports or for the creation of a new passenger airport, including the conversion of an existing airfield into a passenger airport.

5. The investment concerned shall not exceed what is necessary to accommodate the medium-term expected traffic on the basis of reasonable traffic forecasts.

6. The investment aid shall not be granted to an airport located within 100 kilometres or 60 minutes travelling time by car, bus, train or high-speed train from an existing airport from

which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated.

7. Paragraphs 5 and 6 shall not apply to airports with average annual passenger traffic of up to 200 000 passengers during the two financial years preceding the year in which aid is actually granted if the investment aid is not expected to result in the airport increasing its average annual passenger traffic to above 200 000 passengers within two financial years following the granting of the aid. Investment aid granted to such airports shall comply either with paragraph 11 or with paragraphs 13 and 14.

8. Paragraph 6 shall not apply where the investment aid is granted to an airport situated within 100 kilometres from existing airports from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated, provided the route between each of these other existing airports and the airport receiving the aid necessarily involves either a total travelling time by maritime transportation of at least 90 minutes or air transportation.

9. The investment aid shall not be granted to airports with average annual passenger traffic of more than three million passengers during the two financial years preceding the year in which aid is actually granted. The investment aid shall not be expected to result in the airport increasing its average annual traffic to above three million passengers within two financial years following the granting of the aid.

10. The aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years following the granting of the aid.

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

12. The eligible costs shall be the costs relating to the investments in airport infrastructure, including planning costs.

13. The investment aid amount shall not exceed:

- (a) 50% of eligible costs for airports with an average annual passenger traffic of one to three million passengers during the two financial years preceding the year in which aid is actually granted;
- (b) 75% of the eligible costs for airports with average annual passenger traffic of up to one million passengers during the two financial years preceding the year in which aid is actually granted.

14. The maximum aid intensities set out in paragraph 13 may be increased by 20 percentage points for airports located in remote regions.

15. Operating aid shall not be granted to airports with average annual passenger traffic of more than 200 000 passengers during the two financial years preceding the year in which aid is actually granted.

16. The amount of operating aid shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. The aid shall be granted either in the form of periodic instalments fixed *ex ante*, which shall not be increased during the period for

which the aid is granted, or in the form of amounts defined ex post based on the observed operating losses.

17. Operating aid shall not be paid out in respect of any calendar year during which the annual passenger traffic of the airport exceeds 200 000 passengers.

18. The granting of the operating aid shall not be made conditional upon the conclusion of arrangements with specific airlines relating to airport charges, marketing payments or other financial aspects of the airlines' operations at the airport concerned.

SECTION 15

Aid for ports

Article 56b

Aid for maritime ports

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

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

- (a) investments for the construction, replacement or upgrade of port infrastructures;
- (b) investments for the construction, replacement or upgrade of access infrastructure;
- (c) dredging.

3. Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.

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

5. The aid intensity per investment referred to in point (a) of paragraph 2 shall not exceed:

(a) 100% of the eligible costs where total eligible costs of the project are up to EUR 20 million;

(b) 80% of the eligible costs where total eligible costs of the project are above EUR 20 million and up to EUR 50 million;

(c) 60% of the eligible costs where total eligible costs of the project are above EUR 50 million and up to the amount laid down in point (ee) of Article 4(1).

The aid intensity shall not exceed 100 % of the eligible costs determined in point (b) of paragraph 2 and point (c) of paragraph 2 up to the amount laid down in point (ee) of Article 4(1).

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

7. Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.

8. The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.

9. For aid not exceeding EUR 5 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4, 5 and 6.

Article 56c

Aid for inland ports

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

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

- (a) investments for the construction, replacement or upgrade of port infrastructures;
- (b) investments for the construction, replacement or upgrade of access infrastructure;
- (c) dredging.

3. Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.

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

5. The maximum aid intensity shall not exceed 100% of the eligible costs up to the amount laid down in point (ff) of Article 4(1).

6. Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.

7. The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.

8. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4 and 5.";

(21) Article 58 is amended as follows:

- (a) paragraph 1 is replaced by the following:

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

- (b) the following paragraph 3a is inserted:

"3a. Any individual aid granted between 1 July 2014 and [xxx (one day before entry into force of amending Regulation)] in accordance with the provisions of this Regulation as applicable at the time of granting the aid shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty. Any individual aid granted before 1 July 2014 in accordance with the provisions of this Regulation, with the exception of Article 9, as applicable either before or after [date of entry into force of this Regulation] shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty.";

(c) the following paragraph 5 is added:

"5. If this Regulation is amended, any aid scheme exempted under this Regulation as applicable at the time of the entry into force of the scheme shall remain exempted during an adjustment period of six months.";

(22) In Annex II, Part II is replaced by the text in the Annex to this Regulation;

(23) Annex III is amended as follows:

(a) footnote 2 is replaced by the following:

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

(b) the first sentence of footnote 3 is replaced by the following:

"Gross grant equivalent, or for measures under Articles 16, 21, 22 or 39 of this Regulation, the amount of the investment.".

Article 2

In Article 7(1) of Regulation (EU) No 702/2014 the following sentence is added:

"The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council*, provided that the operation is at least partly financed through the EAFRD and that the category of costs is eligible according to the relevant exemption provision.

* Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320)."

Article 3

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

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

Done at Brussels,

For the Commission
The President
Jean-Claude JUNCKER