

#### **44/2016. (III. 10.) Government Regulation**

#### **in relation with state aid rules related to the funds provided by the European Territorial Cooperation Programmes for the 2014-2020 programme period**

The Government, based on its power established in Article 15 of Hungarian Law on public finances No CXCV/2011 paragraph 109 (1<sup>st</sup> indent, point 15.)

and in case of Chapter II, the Hungarian Law on public finances No CXCV/2011 paragraph 109 (1<sup>st</sup> indent, point 32.)

in relation with its tasks established by the Hungarian Fundamental law, Article 15.

(1) disposes the followings:

### **CHAPTER I**

### **GENERAL PROVISIONS**

#### **1. The scope of the Regulation**

**1. §** The scope of this Regulation is the Interreg V-A Romania-Hungary Co-operation Programme (hereinafter cooperation programmes) covers the use, management and operation of state aid provided in the framework of this programme.

#### **2. Explanatory provisions**

##### **2. §** In the use of this Regulation

1. 'steel sector' means all activities related to the production of one or more of the products which are specified in EC Regulation 651/2014/ Article 2, (point 43);

2. 'fundamental research' means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view according to EC Regulation 651/2014, Article 2 (point 84.);

3. 'state aid' means any measure corresponding to procedures on state aid and regional aid map in the sense of the European competition law defined in Government Decree 37/2011 (III.22) paragraph. 2., point 1. 4. 'transparent aid' means any aid for which it is possible to precisely calculate the gross grant equivalent of the aid ex ante without any need to undertake a risk assessment;

5. 'same or similar activity' means an activity according to EC Regulation 651/2014, Article 2., point 50.;

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

7. 'biofuel' means liquid or gaseous fuel for transport produced from biomass;

8. 'dedicated infrastructure' means infrastructure that is ex-ante built for identifiable undertaking(s) and tailored to their needs;

9. 'the discount rate' means the interest rate to be used for discounting purposes shall be the discount rate applicable at the moment the aid is granted;

10. 'single undertaking': specified by 1407/2013 EU Commission Regulation Art. 2 (2);

11. 'support services linked to cooperation' means the provision of office space, websites, data banks, libraries, market research, handbooks, working and model documents;

12. 'advisory services linked to cooperation' means consulting, assistance and training for the exchange of knowledge and experiences and for improvement of cooperation;

13. 'food based biofuel' means a biofuel produced from cereal and other starch rich crops, sugars and oil crops as defined in the Commission's Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources (2);

14. 'primary agricultural production' means production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products;

15. 'first commercial sale' means the first sale by a company on a product or service market, excluding limited sales to test the market;

16. 'eligible cost' shall be as follows:

a) investment costs in tangible and intangible assets;

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

c) a combination of points (a) and (b) not exceeding the amount of (a) or (b), whichever is higher;

17. 'reasonable profit' shall be determined with respect to the typical profit for the sector concerned. In any event, a rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points will be considered to be reasonable;

18. 'sustainable biofuel' means a biofuel fulfilling the sustainability criteria set out in Article 17 of Directive 2009/28/EC;

19. 'physical unbundling' means grants access to the end-consumer access line and allows competitors' own transmission systems to directly transmit over it;

20. 'net increase in the number of employees': specified by 651/2014 EU Commission Regulation Art. 2 (32);

21. 'independent third party' means an undertaking which does not fall under definitions as partner enterprise or linked enterprise according to Annex 1. Art. 3 (2)-(3) in 651/2014 EU Commission Regulation;

22. 'local infrastructure' means infrastructure that contributes at a local level to improving the business and consumer environment and modernising and developing the industrial base;

23. 'loan' means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period. It may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield. The refinancing of existing loans shall not be an eligible loan;

24. 'intangible assets' means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property;

25. 'initial investment' means:

a) an investment in tangible and intangible assets related to the setting-up of a new establishment, extension of the capacity of an existing establishment, diversification of the output of an establishment into products not previously produced in the establishment or a fundamental change in the overall production process of an existing establishment; or

b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking;

26. 'innovation clusters' means structures or organised groups of independent parties specified by 651/2014 EU Commission Regulation Art. 2 (92);

27. 'innovation support services' means the provision of office space, data banks, libraries, market research, laboratories, quality labelling, testing and certification for the purpose of developing more effective products, processes or services;

28. 'innovation advisory services' means consultancy, assistance and training in the fields of knowledge transfer, acquisition, protection and exploitation of intangible assets, use of standards and regulations embedding them;

29. 'industrial research' means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation;

30. 'partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3., 25 % or more of the capital or voting rights of another enterprise (downstream enterprise,

31. 'guarantee' in the context of sections 1, 3 and 7 of the Regulation means a written commitment to assume responsibility for all or part of a third party's newly originated loan transactions such as debt or lease instruments, as well as quasi-equity instruments.;

32. 'secondment' means temporary employment of staff by a beneficiary with the right for the staff to return to the previous employer;

33. 'experimental development' means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services;

34. 'SMEs' is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10

million. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million;

35. 'environmental protection' means any action designed to remedy or prevent damage to physical surroundings or natural resources by a beneficiary's own activities, to reduce risk of such damage or to lead to a more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy;

36. 'employment directly created by an investment project' means employment concerning the activity to which the investment relates, including employment created following an increase in the utilisation rate of the capacity created by the investment;

37. 'research and knowledge-dissemination organisation' means an entity specified by EC Regulation 651/2014 Art. 2 (83);

38. 'research infrastructure' means infrastructure specified by EC Regulation 651/2014 Art. 2 (91);

39. 'installation' means a production or service unit which is functionally an indissoluble whole;

40. 'acquisition of an establishment' means acquisition of tangible and intangible assets related to the setting-up of a new establishment, or an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking with the exception when a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets be bought from third parties unrelated to the buyer shall be waived;

41. 'highly qualified personnel' means staff having a tertiary education degree and at least 5 years of relevant professional experience which may also include doctoral training;

42. 'energy from renewable energy sources' means energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources. It includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems;

43. 'feasibility study' means the evaluation and analysis of the potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success;

44. worker with disabilities' means any person who:

a) is recognised as worker with disabilities under national law; or

b) has long-term physical, mental, intellectual or sensory impairment(s) which, in interaction with various barriers, may hinder their full and effective participation in a work environment on an equal basis with other workers;

45. 'processing of agricultural products' means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;

46. 'marketing of agricultural products' means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose;

47. 'operating profit' means the difference between the discounted revenues and the discounted operating costs over the relevant 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, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid;

48. 'large investment project' means an initial investment with eligible costs exceeding EUR 50 million, calculated at prices and exchange rates on the date of granting the aid;

49. 'wholesale access': specified in Commission Regulation (EU) No 651/2014 Art. 2 (139).

50. 'undertaking in difficulty' specified in Art. 6;

51. 'cumulation rule' any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project. Where such single investment project is a large investment project, the total aid amount for the single investment project shall not exceed the adjusted aid amount for large investment projects,

52. 'own resource' means all of the allocation which the beneficiary makes use of related the project but does not come from the EU or its departments;

53. 'basic broadband networks' Commission Regulation (EU) No 651/2014 Art. 2 (133);

54. 'personnel costs' means the costs of researchers, technicians and other supporting staff to the extent employed on the relevant project or activity;

55. 'coal industry' means any activity in relation with the production of high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal established by the United Nations Economic Commission for Europe and clarified in the Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (1);

56. 'pollution' means the damage caused by a polluter directly or indirectly damaging the environment, or by creating conditions leading to such damage to physical surroundings or natural resources;

57. 'contaminated site' means a site where there is a confirmed presence, caused by man, of hazardous substances of such a level that they pose a significant risk to human health or the environment taking into account current and approved future use of the land;

58. 'polluter pays principle' or 'PPP' means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution;

59. 'organisational cooperation' means the development of joint business strategies or management structures, the provision of common services or services to facilitate cooperation, coordinated activities such as research or marketing, the support of networks and clusters, the improvement of accessibility and communication, the use of joint instruments to encourage entrepreneurship and trade with SMEs;

60. 'on-going investment' means the replacement of equipment, without the extension of the capacity and the diversification of the output of an establishment or a fundamental change in the overall production process;

61. 'synthetic fibres sector' means sector specified in 654/2014 EU Commission Regulation Art. 2 (44);

62. 'arm's length' means that the conditions of the transaction between the contracting parties do not differ from those which would be stipulated between independent enterprises and contain no element of collusion. Any transaction that results from an open, transparent and non-discriminatory procedure is considered as meeting the arm's length principle;

63. 'aid intensity' means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;

64. 'territorial spending obligations' means the obligations imposed by the authority granting the aid on beneficiaries to spend a minimum amount and/or conduct a minimum level of production activity in a particular territory;

65. 'tangible assets' means assets consisting of land, buildings and plant, machinery and equipment;

66. 'next generation access (NGA) network' means network specified by 654/2014 EU Commission Regulation Art. 2 (138);

67. '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 to 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;

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

68. 'Union standard' specified by 654/2014 EU Commission Regulation Art. 2 (102).

## **CHAPTER II**

### **SPECIAL RULES FOR THE COOPERATION PROGRAMMES**

#### 3. Joint rules

##### 1. Interreg V-A Romania-Hungary Co-operation Programme

**10. §** State aid relevant categories, supported activities in the framework of the Interreg V-A Romania-Hungary Co-operation Programme:

1. Investing in the water sector to meet the requirements of the Union's environmental acquis and to address needs, identified by the Member States, for investment that goes beyond those requirements;
2. Conserving, protecting, promoting and developing natural and cultural heritage,
3. Enhancing regional mobility by connecting secondary and tertiary nodes to TEN-T infrastructure, including multimodal nodes;
4. Developing and improving environmentally-friendly (including low noise) and low-carbon transport systems, including inland waterways and maritime transport, ports, multimodal links and airport infrastructure, in order to promote sustainable regional and local mobility;
5. Supporting employment-friendly growth through the development of endogenous potential as part of a territorial strategy for specific areas, including the conversion of declining industrial regions and enhancement of accessibility to, and development of, specific natural and cultural resources;
6. Investing in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and the transition from institutional to community-based services;
7. Promoting investment to address specific risks, ensuring disaster resilience and developing disaster management systems;
8. Promoting legal and administrative cooperation and cooperation between citizens and institutions.

**11. §** If the subsidy, according to 10. §, is considered State aid:

1. based on point 1-8., becomes eligible for 'Regional investment aid';
2. based on point 1-8., becomes eligible for 'Training aid';
3. based on point 2-4. and 7., becomes eligible for 'Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards';
4. based on point 2. and 8., becomes eligible for 'Aid for culture and heritage conservation';
5. based on point 4., becomes eligible for 'Investment aid for energy efficiency measures';
6. based on point 4., becomes eligible for 'Aid for the employment of workers with disabilities in the form of wage subsidies';
7. based on point 1-7., becomes eligible for 'Investment aid for local infrastructures';
8. based on point 1-8., becomes eligible for 'de minimis';

9. based on point 1. and 7., becomes eligible for 'Investment aid for remediation of contaminated sites'.

### **CHAPTER III**

#### **COMMON PROVISIONS FOR DIFFERENT CATEGORIES OF AID**

**18. §** (1) Records of the documentation related to the subsidy shall be kept, by the applicant, for 10 years from the date on which the aid decision has been made.

(2) During the time period under paragraph (1), the beneficiary shall fulfil the obligations concerning availability for audits, publication and information and other forms of cooperation.

**19. §** (1) Aid can not be granted to:

a) an undertaking which is subject to an outstanding recovery order following a previous Commission decision;

b) undertakings with difficulty.

(2) Aid can not be granted:

a) in the fishery and aquaculture sector, 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 (to be referred as Regulation (EU) No 1379/2013 of the European Parliament and of the Council) for production, processing and selling of aquaculture products according to sub-chapters 11-18.

b) in the primary agricultural production sector under sub-chapters 11., 12., 14., 15., 22., 23.;

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

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

cb) where the aid is conditional on being partly or entirely passed on to primary producers.

d) to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;

e) to contingent upon the use of domestic over imported goods;

f) with condition which goes against the law of EU.

**20. §** Based on the EC Regulation 651/2014/ – with exception of sub-chapters 21. and 27. – aid can only be given if the beneficiary submitted the application form containing all the required documents under Article 6 (2) of EC Regulation 651/2014/

**21. §** (1) Aid with identifiable eligible costs exempted by this Regulation may be cumulated with any other local, regional, national or EU aid, in relation to the same eligible costs or partly similar eligible costs, only if such cumulation does not result in exceeding the highest aid intensity applicable to this aid under the Block Exemption Regulation or the approving decision of the EU.



(2) Aid with identifiable eligible costs exempted by this Regulation may be cumulated with any other State aid, as long as those measures concern different identifiable eligible costs.

(3) The total amount of State aid for the aided project – regardless from the source of the aid - should be allowed up to the highest aid intensity or aid amount applicable to that aid under this Regulation.

(4) Aid without identifiable eligible costs according to sub-chapter 29. may be cumulated with any other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by this or another block exemption regulation or decision adopted by the Commission.

**22. §** (1) All figures used should be taken before any deduction of tax or other charges. If the aid was eligible, the support has to be considered as the total amount of allocation.

(2) Aid payable in several instalments should be discounted to its value at the moment it is granted.

**23. §** Granting of aid is subject to prior notification to EC if the aid exceeds the following thresholds:

1. for regional investment aid: the ‘adjusted aid amount’ of aid - the maximum permissible aid amount for a large investment project - for an investment with eligible costs of EUR 100 million;

2. for investment aid to SMEs: EUR 7,5 million per undertaking per investment project;

3. for aid for consultancy in favour of SMEs: EUR 2 million per undertaking, per project;

4. for aid to SMEs for participation in fairs: EUR 2 million per undertaking, per year;

5. for aid to SMEs for cooperation costs incurred by participating in European Territorial Cooperation projects: EUR 2 million per undertaking, per project;

6. for aid for research and development:

a) if the project is predominantly fundamental research: EUR 40 million per undertaking, per project where more than half of the eligible costs of the project are incurred through activities which fall within the category of fundamental research;

b) if the project is predominantly industrial research: EUR 20 million per undertaking, per project where more than half of the eligible costs of the project are incurred through activities which fall within the category of industrial research or within the categories of industrial research and fundamental research taken together;

c) if the project is predominantly experimental development: EUR 15 million per undertaking, per project where more than half of the eligible costs of the project are incurred through activities which fall within the category of experimental development;

d) if the project is a Eureka project or is implemented by a Joint Undertaking established on the basis of Article 185 or of Article 187 of the Treaty, the amounts referred to in points (a) to (c) are doubled;

e) if the aid for research and development projects is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate

their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of a reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the time of grant, the amounts referred to in points (a) to (d) are increased by 50 %;

f) aid for feasibility studies in preparation for research activities: EUR 7,5 million per study.

7. for investment aid for research infrastructures: EUR 20 million per infrastructure;

8. for aid for innovation clusters: EUR 7,5 million per cluster;

9. innovation aid for SMEs: EUR 5 million per undertaking, per project;

10. for training aid: EUR 2 million per training project;

11. for aid for the employment of workers with disabilities in the form of wage subsidies: EUR 10 million per undertaking, per year;

12. aid, according to paragraph 22-25. exceed 15 million per undertaking;

13. for investment aid for remediation of contaminated sites: EUR 20 million per undertaking per investment project;

14. for investment aid for culture and heritage conservation: EUR 100 million per project; operating aid for culture and heritage conservation: EUR 50 million per undertaking per year;

15. for investment aid for local infrastructures: EUR 10 million or the total costs exceeding EUR 20 million for the same infrastructure.

**24. §** Under this Regulation, the decision about funding will be made:

a) in case of regional investment, until 31 December 2020.;

b) in case of aid categories mentioned under 12-18., until 30 June 2021.;

c) in case of de minimis, until 30 June 2021. as well.

## **CHAPTER IV**

### **SPECIFIC PROVISIONS FOR DIFFERENT CATEGORIES OF AID**

#### **11. Regional investment aid**

**25. §** (1) In assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, the aid may be granted to SMEs for any form of initial investment.

(2) For aid granted 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.

(3) For aid granted 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.

**26. §** (1) The investment shall be maintained in the recipient area for at least three years in the case of SMEs, after completion of the investment.

(2) The assets acquired shall be new except for SMEs and for the acquisition of an establishment.

(3) This shall 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 relevant minimum period. If aid has already

been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment. The new equipment's shall be used under the same purpose and need to have the same or even bigger capacity and with the age not older than the previous one.

(4) The aid beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support.

**27. §** Aid can not be granted to:

- a) activities in the steel sector;
- b) the shipbuilding sector;
- c) the coal sector;
- d) the synthetic fibres sector;
- e) the charge-related transport sector as well as its infrastructure;
- f) energy generation, distribution and infrastructure;
- g) the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament;
- h) individual regional investment aid to a beneficiary that has closed down the same or a similar activity in the European Economic Area in the two years preceding its application for regional investment aid or which, at the time of the aid application, has concrete plans to close down such an activity within a period of up to two years after the initial investment for which aid is requested is completed in the area concerned.

**28. §** (1) The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80 % of the eligible costs as specified in Art. 25 (2)-(6).

(2) The aid intensity – with the exception of big investment – may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings if it still meet the criteria related the size of undertaking category.

(3) For large investment projects the aid amount shall not exceed the adjusted aid amount calculated in accordance with the mechanism defined in Article 2, point 20.

(4) Any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project.

(5) Where such single investment project is a large investment project, the total aid amount for the single investment project shall not exceed the adjusted aid amount for large investment projects.

(6) Where such single investment project is a large investment project, the total aid amount for the single investment project shall not exceed the adjusted aid amount for large investment projects.

**29. §** (1) The eligible costs shall be as follows:

- a) investment costs in tangible and intangible assets;
- b) the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years; or

c) a combination of points (a) and (b) not exceeding the amount of (a) or (b), whichever is higher.

(2) The eligible costs, in case of (1) b):

a) assets consisting of land, buildings and plant, machinery and equipment;

b) assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property;

c) costs related to the acquisition of an establishment;

d) the rental fee of the machinery and real estate during the maintaining period.

(3) The estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years are eligible.

(4) Costs related to the lease of tangible assets may be taken into account under the following conditions:

a) for land and buildings, the lease must continue for at least five years after the expected date of completion of the investment project for large undertakings or three years in the case of SMEs;

b) 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 upon expiry of the term of the lease.

(5) If aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment. Where a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets be bought from third parties unrelated to the buyer shall be waived.

(6) Intangible assets shall fulfil all of the following conditions:

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

b) they shall be regarded as amortizable assets;

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

d) they shall be included in the assets of the undertaking for at least three years.

(7) Shall not be eligible:

a) the costs of instruments maintaining the certain level of production;

b) for the acquisition of tangible and immaterial assets, if aid has already been granted for the same operation of the same enterprise;

c) for the acquisition of tangible and immaterial assets, which has been bought from a company in difficulty or under process of elimination;

d) the cost incurred before submitting the application;

e) the cost of recently purchased personal vehicle.

(8) Where eligible costs are calculated by reference to the estimated wage costs as referred to in paragraph 1(b), the following conditions shall be fulfilled:

a) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months;

b) each post shall be filled within three years of completion of works; and,

c) each job created through the investment shall be maintained in the area concerned for a period of at least five years from the date the post was first filled, or three years in the case of SMEs.

(9) If aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment. Where a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets be bought from third parties unrelated to the buyer shall be waived.

**30. §** Start of construction works relating to the investment:

a) the first record in the building dairy or the first legally binding commitment that makes the investment irreversible;

b) the acquisition of tangible and immaterial assets.

c) the date of buying an establishment;

d) either of them happened at first,

excluding buying land and preparatory works such as obtaining permits and conducting feasibility studies, because they are not considered start of works.

**31. §** Under the investment aid for research infrastructure access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis.

**32. §** (1) The investment shall be located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within three years from the moment of publication of the planned aid measure, which shall also be verified through an open public consultation.

(2) The network operator shall offer the widest possible active and passive wholesale access, according to Article 2, point 139 of this Regulation, under fair and non-discriminatory conditions, including physical unbundling in the case of NGA networks.

(3) The subsidized network operator must offer active and passive wholesale access under fair and non-discriminatory conditions including physical unbundling in the case of NGA networks.

(4) The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process respecting the principle of technology neutrality.

## 12. Investment aid to SMEs

**33. §** (1) Investment aid to SMEs can be only granted to small and medium-size entrepreneurs.

(2) The aid intensity shall not exceed: (a) 20 % of the eligible costs in the case of small enterprises; (b) 10 % of the eligible costs in the case of medium-sized enterprises.

(3) The eligible costs shall be either or both of the following:

a) the costs of investment in tangible and intangible assets;

b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years.

## 13. Aid for consultancy in favour of SMEs

**34. §** (1) The aid intensity shall not exceed 50 % of the eligible costs.

(2) The eligible costs shall be the costs of consultancy services provided by external consultants.

14. Aid to SMEs for participation in fairs

**35. §** (1) The aid intensity shall not exceed 50 % of the eligible costs.

(2) The eligible costs shall be the costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.

15. Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects

**36. §** (1) The aid intensity shall not exceed 50 % of the eligible costs.

(2) The eligible costs shall be the following:

a) costs for organisational cooperation including the cost of staff and offices to the extent that it is linked to the cooperation project;

b) costs of advisory and support services linked to cooperation and delivered by external consultants and service providers;

c) travel expenses, costs of equipment and investment expenditure directly related to the project and depreciation of tools and equipment used directly for the project.

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

16. Aid for research and development projects

**37. §** (1) The aided part of the research and development project shall completely fall within one or more of the following categories:

a) fundamental research;

b) industrial research;

c) experimental development;

d) feasibility studies;

**38. §** (1) The eligible costs of research and development projects shall be allocated to a specific category of research and development and shall be the following.

(2) In case of 37. § (a)-(c) shall be eligible:

a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;

b) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible;

c) costs for buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally

accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;

*d)* costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;

*e)* additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project.

(3) The eligible costs for feasibility studies shall be the costs of the study.

**39. §** (1) The aid intensity for each beneficiary shall not exceed:

*a)* 100 % of the eligible costs for fundamental research;

*b)* 50 % of the eligible costs for industrial research;

*c)* 25 % of the eligible costs for experimental development;

*d)* 50 % of the eligible costs for feasibility studies.

(2) The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80 % of the eligible costs as follows:

*a)* by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;

*b)* by 15 percentage points if one of the following conditions is fulfilled:

*ba)* the project involves effective collaboration: between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results;

*bb)* the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.

(3) The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80 % of the eligible costs.

(4) The aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

(5) The intensity of aid has to be identified by the beneficiaries as separate investments, as well as in the cooperation project which fall under paragraph 2 (*b*), (*ba*).

## 17. Investment aid for research infrastructures

**40. §** (1) The eligible costs shall be the investment costs in intangible and tangible assets.

(2) The aid intensity shall not exceed 50 % of the eligible costs.

(3) The price charged for the operation or use of the infrastructure shall correspond to a market price.

(4) Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential

access under more favorable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

(5) The Regulation paragraph (1)-(4) shall be used only in case of the construction or upgrade of research infrastructures that perform economic activities. Where a research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.

(6) Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.

#### 18. Aid for innovation clusters

**41. §** (1) Aid for innovation clusters shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation).

(2) Investment aid may be granted for the construction or upgrade of innovation clusters. The eligible costs shall be the investment costs in intangible and tangible assets.

(3) Operating aid may be granted for the operation of innovation clusters. It shall not exceed 10 years.

(4) The eligible costs of operating aid for innovation clusters shall be the personnel and administrative costs (including overhead costs) relating to:

*a)* animation of the cluster to facilitate collaboration, information sharing and the provision or channelling of specialised and customised business support services;

*b)* marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;

*c)* management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.

**42. §** (1) The aid intensity of operating aid shall not exceed 50 % of the total eligible costs during the period over which the aid is granted.

(2) The aid intensity may be increased by 15 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

**43. §** (1) Access to the cluster's premises, facilities and activities shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the innovation cluster may be granted preferential access under more favorable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

(2) The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs.



## 19. Innovation aid for SMEs

**44. §** (1) The eligible costs shall be the following:

*a)* costs for obtaining, validating and defending patents and other intangible assets;

*b)* costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;

*c)* costs for innovation advisory and support services.

(2) The aid intensity shall not exceed 50 % of the eligible costs.

(3) In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100 % of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200 000 per undertaking within any three year period.

## 20. Training aid

**45. §** (1) The aid intensity shall not exceed 50 % of the eligible costs.

(2) It may be increased as follows:

*a)* by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;

*b)* by 10 percentage points if the aid is granted to medium-sized enterprises and;

*c)* by 20 percentage points if the aid is granted to small enterprises.

(3) It may be increased, up to a maximum aid intensity of 70 % of the eligible costs, as follows.

(4) The eligible costs shall be the following

*a)* trainers' personnel costs, for the hours during which the trainers participate in the training;

*b)* trainers' and trainees' operating costs directly relating to the training project such as travel expenses, 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;

*c)* costs of advisory services linked to the training project;

*d)* trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training;

*e)* accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities.

(5) Aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training or in case of investments, trainings for the basic operation of the investment.

## 21. Aid for the employment of workers with disabilities in the form of wage subsidies

**46. §** (1) The aid intensity shall not exceed 75 % of the eligible costs.

(2) Eligible costs shall be the wage costs over any given period during which the worker with disabilities is employed.

(3) The recruitment has to represent a net increase, compared with the average over the previous 12 months, in the number of employees in the undertaking concerned.

(4) The post or posts shall have fallen vacant following voluntary departure, disabilities, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

(5) Except in the case of lawful dismissal for misconduct, the workers with disabilities shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements which are legally binding for the undertaking and governing employment contracts.

22. Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards

**47. §** (1) Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards. The investment shall fulfil one of the following conditions:

*a)* it shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;

*b)* it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards;

*c)* the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Union standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date;

*d)* retrofitting of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the Union standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, they do not apply retroactively to those vehicles.

(2) Aid shall not be granted where investments are undertaken to ensure that undertakings comply with Union standards already adopted and not yet in force.

**48. §** (1) The aid intensity shall not exceed 40 % of the eligible costs.

(2) The aid intensity may be increased by 10 percentage points for aid granted to medium sized undertakings and by 20 percentage points for aid granted to small undertakings.

(3) The aid intensity may be increased by 15 percentage points for investments located in assisted areas according to Government Decree 37/2011 (III.22), par. 25, (1), point a) – c) and by 5 percentage points for investments located in assisted areas according to Government Decree 37/2011 (III.22), par. 25, (1), point d).

**49. §** (1) The eligible costs shall be the extra investment costs necessary:

*a)* to go beyond the applicable Union standards,

b) to increase the level of environmental protection in the absence of Union standards.

(2) Where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs.

(3) The eligible costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.

## 23. Investment aid for early adaptation to future Union standards

**50. §** (1) Aid encouraging undertakings to comply with new Union standards which increase the level of environmental protection and are not yet in force shall be compatible with the internal market.

(2) The Union standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.

(3) cannot exceed 20 % of the eligible costs for small undertakings, 15 % of the eligible costs for medium-sized undertakings if the implementation and finalisation of the investment take place more than three years before the date of entry into force of the new Union standard.

(4) cannot exceed 15 % of the eligible costs for small undertakings, 10 % of the eligible costs for medium-sized undertakings if the implementation and finalisation of the investment take place between one and three years before the date of entry into force of the new Union standard.

(5) The aid intensity may be increased according to par. 48 (3).

(6) In case of investments for early adaptation to future Union standards costs directly linked to the investment according to 49. § (2) and (3) are eligible.

## 24. Investment aid for energy efficiency measures

**51. §** (1) The aid intensity shall not exceed 30 % of the eligible costs.

(2) Aid shall not be granted under this Article where improvements are undertaken to ensure that undertakings comply with Union standards already adopted, even if they are not yet in force.

(3) The aid intensity may be increased according to par. 48 (2) and (3). (4) The eligible costs shall be the extra investment costs necessary

to go beyond the applicable Union standards, or to increase the level of environmental protection in the absence of Union standards according to par. 49 (2) and (3).

## 25. Investment aid for the promotion of energy from renewable sources

**52. §** (1) The investment aid shall be granted to new installations only.

(2) Investment aid for the production of biofuels can be granted only to the extent that the aided investments are used for the production of sustainable biofuels.

(3) However, investment aid to convert existing food-based biofuel plants into advanced biofuel plants shall be exempted under this Article, provided that the food-based production would be reduced commensurate to the new capacity.

**53. §** (1) The aid intensity shall not exceed

*a)* 45 % of the eligible costs if the eligible costs are calculated on the basis of par. 55, (2) and (3);

*b)* 30 % of the eligible cost if the eligible costs are calculated on the basis of par. 55, (4).

(2) The aid intensity may be increased according to par. 48 (2) and (3). (3) Where aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid intensity may reach 100 % of the eligible costs.

(4) The budget related to the bidding process shall be a binding constraint in the sense that not all participants can receive aid and the aid shall be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations.

**54. §** (1) Aid shall not be granted:

*a)* for biofuels which are subject to a supply or blending obligation;

*b)* for hydropower installations that do not comply with Directive 2000/60/EC of the European Parliament.

(2) No aid shall be granted or paid out after the installation started operations and aid shall be independent from the output.

(3). No aid shall be granted to cover operation fees.

**55. §** (1) The costs directly linked to the achievement of a higher level of environmental protection shall be eligible.

(2) Where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs

(3) In all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.

(4) For certain small installations where a less environmentally friendly investment cannot be established as plants of a limited size do not exist, the total investment costs to achieve a higher level of environmental protection shall constitute the eligible costs.

## 26. Investment aid for remediation of contaminated sites

**56. §** (1) The investment shall lead to the repair of the environmental damage, including damage to the quality of the soil or of surface water or groundwater.

(2) The aid intensity shall not exceed 100 % of the eligible costs.

(3) That person must finance the remediation in accordance with the 'polluter pays' principle, and no State aid shall be granted. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, the person responsible for the remediation or decontamination work may receive State aid..

(4) Evaluations of the increase in value of the land resulting from remediation shall be carried out by an independent expert.

27. Aid for culture and heritage conservation

**57. §** (1) Can be granted for investments, operation and publication of music and literature works.

(2) Aid - with exception of press and magazines, whether they are published in print or electronically - shall be eligible under this Article.:

*a)* museums, archives, libraries, artistic and public cultural centers or spaces, theatres, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;

*b)* tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;

*c)* intangible heritage in any form, including folklorist customs and crafts;

*d)* art or cultural events and performances, festivals, exhibitions and other similar cultural activities;

*e)* cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;

*f)* writing, editing, production, distribution, digitisation and publishing of music and literature, including translations.

**58. §** (1) For investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment.

(2) The operating profit shall be:

*a)* deducted from the eligible costs ex ante, on the basis of reasonable projections;

*b)* or through a claw-back mechanism.

(3) For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets, including:

*a)* costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80 % of either the time or the space capacity per year is used for cultural purposes;

*b)* costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;

*c)* costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;

*d)* costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled

persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;

*e)* costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project.

**59. §** (1) For operating aid, the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period.

(2) The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period.

(3) This shall be ensured *ex ante*, on the basis of reasonable projections, or.

(4) through a clawback mechanism.

(5) For operating aid, the eligible costs shall be the following:

*a)* the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;

*b)* costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;

*c)* costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities,

*d)* operating costs directly relating to the cultural project or activity, such as

*da)* rent or lease of real estate and cultural venues;

*db)* travel expenses, materials and supplies directly related to the cultural project or activity;

*dc)* architectural structures for exhibitions and stage sets;

*dd)* loan and lease of tools, software and equipment;

*de)* depreciation of tools, software and equipment;

*df)* costs for access rights to copyright works and other related intellectual property rights protected contents;

*dg)* costs for promotion and;

*dh)* costs incurred directly as a result of the project or activity;

*e)* costs for personnel working for the cultural institution or heritage site or for a project;

*f)* costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.

**60. §** For aid not exceeding EUR 1 million, the maximum amount of aid may be set, alternatively to paragraph 58 (1) and (2) and to the method referred to in paragraph 59 (1) - (4), but it cannot exceed 80 % of eligible costs.

**61. §** (1) For publishing of music and literature as defined in paragraph 2(f), the maximum aid amount shall not exceed:

*a)* either 70 % of the eligible costs; or

*b)* the difference between the eligible costs and the project's discounted revenues, revenues shall be subtracted from the eligible costs *ex-ante* or with a claw-back mechanism.

(2) The eligible costs shall be the costs for publishing of music and literature, including:

- a) the authors' fees (copyright costs);
- b) translators' fees;
- c) editors' fees;
- d) other editorial costs (proofreading, correcting, reviewing);
- e) layout and pre-press costs;
- f) and printing or e-publication costs.

## 28. Investment aid for local infrastructures

**62. §** (1) Financing for the construction or upgrade of local infrastructures which concerns infrastructure that contribute at a local level to improving the business and consumer environment and modernising and developing the industrial base.

(2) This Article shall not apply to aid for infrastructures that is covered by other sections of EC Regulation 651/2014 with the exception of Regional aid. This Article shall also not apply to airport infrastructure and port infrastructure.

(3) Aid can be granted if the infrastructure will be made available in a transparent and non-discriminatory manner. Costs for use of infrastructure or selling of the infrastructure must be usual market prices. (4) Any concession or other entrustment to a third party to operate the infrastructure shall be assigned in an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

**63. §** (1) Costs of investment in material and immaterial assets linked to the investment are eligible.

(2) The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment.

(3) The operating profit shall be deducted:

- a) from the eligible costs ex ante, on the basis of reasonable projections, or
- b) through a claw-back mechanism.

## 29. De minimis

**64. §** (1) The total amount of de minimis aid granted per Member State to a single undertaking shall not exceed EUR 200 000 and in a case of a single undertaking performing road freight transport for hire or reward shall not exceed EUR 100 000 while taking into account the Art. 3, paragraph 8. and 9. of 1407/2013/EU Commission Regulation.

(2) The total amount of de minimis aid granted per Member State to a single undertaking shall not exceed EUR 200 000 over any period of three fiscal years.

(3) 1407/2013/EU Commission Regulation applies to aid granted to undertakings in all sectors, with the exceptions mentioned under Art. 1, paragraph 1.

(4) Aid comprised in loans or in guarantees shall be considered as transparent de minimis aid if the beneficiary is not subject to collective insolvency proceedings nor fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(5) This de minimis aid shall not be used for the acquisition of road freight transport vehicles.

(6) De minimis aid granted in accordance with this Regulation may be cumulated with de minimis aid granted in accordance with Commission Regulation (EU) No 360/2012 (1) up to the ceiling laid down in that Regulation. It may be cumulated with de minimis aid granted in accordance with other de minimis regulations up to the relevant ceiling laid down in point (1).

(7) De minimis aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission.

(8) Before granting the aid, the Member State shall obtain a declaration from the undertaking concerned, in written or electronic form, about any other de minimis aid received to which EC Regulation 1407/2013 article 5 (1) or other de minimis regulations apply during the previous two fiscal years and the current fiscal year.

## **CHAPTER V**

### **FINAL PROVISIONS**

**65. §** This Regulation shall enter into force the day after its publication.

**66. §** This Regulation sums up:

*a)* the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and;

*b)* the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.