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## **DRAFT COMMUNICATION FROM THE COMMISSION**

### **Framework for State Aid measures to support the Clean Industrial Deal (Clean Industrial Deal State Aid Framework)**

#### **1. INTRODUCTION**

- (1) On 26 February 2025, the Commission adopted the Communication on The Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation<sup>1</sup>. This Framework seeks to accompany the Clean Industrial Deal by setting out how Member States can design State aid measures to support their objectives related to the Clean Industrial Deal.
- (2) The Clean Industrial Deal proposes actions to improve access to affordable energy, to boost demand and supply of clean tech products, to enable public and private investments, to power the circular economy, to develop international partnerships and to secure skills and quality jobs for social fairness. The Clean Industrial Deal provides a comprehensive growth strategy for the development in the Union of a competitive, resilient, decarbonised industry, offering opportunities for investors and contributing to social cohesion and equity across all regions. The Clean Industrial Deal represents a commitment to accelerate decarbonisation, reindustrialisation and innovation, all at the same time and across the entire continent, also reinforcing Europe's resilience. It must present European industry with a stronger business case for large climate neutral investments in energy intensive industries and clean tech. It underlines the need for unlocking investment to allow for sufficient manufacturing capacity in the Union, creating lead markets for clean tech, abating high energy prices, providing the right conditions for companies to grow, compete and lead world-wide as well as to address distortions caused by foreign subsidies.

#### **1.1. NEED TO INCENTIVISE INVESTMENTS IN EUROPE**

- (3) To achieve the ambitions of the Clean Industrial Deal, considerable investment will be needed and for which funds will need to be mobilised, mainly from private sources, but, where necessary, incentivised or complemented by public funds.
- (4) As outlined by the Clean Industrial Deal Communication, investments are needed to further accelerate the roll-out of renewable energy, to deploy industrial decarbonisation, and to ensure sufficient manufacturing capacity of clean tech. This Communication specifies the criteria the Commission will apply when assessing State aid measures that Member States intend to take to contribute to these goals. It enables a longer planning horizon for Member States and investment predictability and security for businesses, without unduly distorting competition and trade and while preserving cohesion objectives.
- (5) Crowding-in private investments by way of financial instruments is of vital importance. For example, Member States can co-invest with private investors on

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<sup>1</sup> COM(2025) 85 final.

market terms.<sup>2</sup> At the same time, certain groups of private investors, such as pension funds and insurance undertakings, remain risk-averse despite their general capacity to invest. Therefore, the Communication also sets out the conditions based on which Member States can further incentivise such private investors through schemes to reduce risks of investments in certain portfolios of projects. Such schemes must ensure additionality, meaning that through reducing the risks associated with the investment they crowd in private investors that otherwise would not have invested in this type of projects. To ensure that the aid is passed on to the relevant projects to the largest extent possible, such schemes should limit by their design the aid to the investors to the minimum necessary.

- (6) In addition, to support the production of certain products, Member States may also introduce tax incentives in the form of accelerated depreciation, including immediate expensing, for the acquisition of clean technology assets required for the transition to a net-zero economy. Measures which are not designed to selectively favour a specific undertaking or sector and are de jure and de facto open to all actual and potential operators are regarded as general in nature and thus do not constitute State aid<sup>3</sup>. However, where such incentives are selective and therefore involve State aid, the Commission will consider such aid compatible with the internal market based on the conditions set out in this Communication.

## **1.2. SIMPLIFICATION REQUIRED FOR SPECIFIC MEASURES ENSURING ACCELERATION AND SUFFICIENT INVESTMENT**

- (7) The Union's rules on State aid contribute to the internal market not being fragmented and the level playing field being preserved. The integrity of the internal market is important to withstand external pressure and to avoid subsidy races between Member States to the detriment of cohesion within the Union.
- (8) By setting out compatibility conditions for measures aimed at developing economic activities via investments, this Communication complements the existing State aid guidelines. The simplified compatibility conditions of this Communication compared to other existing State aid guidelines, including the Guidelines on State aid for climate, environmental protection and energy ('CEEAG')<sup>4</sup>, are justified by the need to enable and accelerate specific investments and activities. The compatibility conditions outlined in this Communication are based on the case practice and relevant experience gathered by the Commission, including from the application of the Temporary Crisis and Transition Framework ('TCTF')<sup>5</sup>. Fully recognising Member States' rights to

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<sup>2</sup> If a public authority invests on market terms (for example based on *pari passu* terms alongside private investors or where market conformity is established based on other instruments such as benchmarking), the instruments do not contain State aid within the meaning of Article 107(1) of the Treaty. See Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1 ('Notice on the notion of aid'), section 4.2.3.

<sup>3</sup> See Notice on the notion of aid, section 5.

<sup>4</sup> Guidelines on State aid for climate, environmental protection and energy 2022, OJ C 80, 18.2.2022, p. 1.

<sup>5</sup> Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3), as amended by Commission Communications C(2023)8045 (OJ C1188, 21.11.2023, ELI: <http://data.europa.eu/eli/C/2023/1188/oj>) and C(2024)3123 (OJ C3113, 2.5.2024, ELI: <http://data.europa.eu/eli/C/2024/3113/oj>). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), ('Temporary Crisis Framework'), which had already replaced the previous Temporary Crisis Framework adopted on 23 March

determine their energy mix, the Commission will conduct a timely assessment of State aid for nuclear supply chains and technologies, including for small modular reactors, with a view to ensuring legal certainty for such aid, in line with the Treaty or with any applicable guidelines, and with respect to technological neutrality.

## 2. DEFINITIONS

- (9) The following definitions apply across all the sections of this Communication:
- (a) ‘assisted area’ means an area designated in a regional aid map approved by the Commission in application of Article 107(3), point (a) or (c), of the Treaty, in force at the time of the award of the aid;
  - (b) ‘capacity mechanism’ means capacity mechanism as defined in Article 2, point 22 of Regulation (EU) 2019/943 of the European Parliament and of the Council<sup>6</sup>;
  - (c) ‘claw-back mechanism’ means a mechanism by which the Member State receives an appropriate share of any additional surpluses generated by an aided project, defined as the difference between the actual *ex post* cash-flows of the project and the forecasted cash-flows of that project based on the factual scenario on which the funding gap is calculated;
  - (d) ‘competitive bidding process’ means a bidding process that complies with all of the following conditions: (i) open, clear, transparent and non-discriminatory, based on objective criteria, defined *ex ante* in accordance with the objective of the measure and minimising the risk of strategic bidding; (ii) with at least 70 % in the total selection criteria used for ranking bids defined in terms of aid per unit of environmental protection (such as aid per unit of reference energy output or capacity installed or flexibility service provided under section 4, or EUR per tonne of CO<sub>2</sub> reduced or unit of energy saved under section 5); (iii) the criteria are published sufficiently<sup>7</sup> in advance of the deadline for submitting applications to enable effective competition; (iv) the budget or volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid<sup>8</sup>; (v) the aid amount is determined on the basis of the initial bid or a clearing price; in order to determine the costs of the project, any State aid or funding from centrally managed EU funds granted for the same project must be added to the bid for the purpose of the ranking the bids; and (vi) *ex post* adjustments to the bidding process outcome (such as

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2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

<sup>6</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158 14.6.2019, p. 54) (‘Electricity Regulation’).

<sup>7</sup> The Commission considers that this normally means at least 6 weeks in advance unless a shorter timeframe can be justified based on the specific circumstances of a measure.

<sup>8</sup> The budget or volume tendered must be set to ensure that the bidding process is competitive. The Member State must prove the plausibility that the budget or volume tendered will match or be lower than the potential offer of projects. This can be done with reference to past comparable auctions, to technology targets in the National Energy and Climate Plan, or by introducing a safeguard mechanism in case of risk of undersubscribed tenders where several competitive bidding processes are envisaged under the measure. In case of repeated undersubscription of competitive bidding processes, the Member State must introduce remedies for the same or any future schemes that it notifies to the Commission for the same technology or projects.

subsequent negotiations on bid results or rationing) are precluded as they can undermine the efficiency of the process's outcome;

- (e) 'fully renewable electricity' means fully renewable electricity within the meaning of the rules set out in Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin;
- (f) 'funding gap' means the difference between the net present value ('NPV') of the project (the factual scenario) taking into account all expected future positive and negative cash-flows including taxes generated by the investment over its lifetime and a terminal value, discounted using the beneficiary's weighted average cost of capital, and the NPV of all expected cash-flows related to the counterfactual investment (the counterfactual scenario);
- (g) 'gross grant equivalent' means the discounted amount of aid if it had been provided in the form of a grant to the aid beneficiary, before taxes or other charges, as calculated at the date of award of the aid, or at the time the aid is notified to the Commission, whichever is earlier, on the basis of the reference rate applicable at that date<sup>9</sup>;
- (h) 'National Regulatory Authority' or 'NRA' means the regulatory authority designated by each Member State pursuant to Article 57(1) of Directive (EU) 2019/944 of the European Parliament and of the Council<sup>10</sup>;
- (i) 'relocation' means a transfer of the same or a similar activity or part thereof from an establishment in one contracting party to the EEA Agreement ('initial establishment') to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement ('aided establishment'). There is a transfer if the product or service in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the aid beneficiary in the EEA;
- (j) 'small and medium-sized enterprise' or 'SME' means an undertaking that fulfils the conditions laid down in the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises<sup>11</sup>;
- (k) 'start of works' means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works;

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<sup>9</sup> The reference rate used as a discount rate is equal to the base rate increased by a fixed margin of 100 basis points. See Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

<sup>10</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) (OJ L 158, 14.6.2019, p. 125).

<sup>11</sup> OJ L 124, 20.5.2003, p. 36.

- (l) ‘strategic reserve’ means a capacity mechanism in which electricity capacity, such as generation, storage or demand response, is held outside the electricity market and only dispatched in specific circumstances;
- (m) ‘entrusted entity’ means the European Investment Bank and the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a legal entity that carries out financial activities on a professional basis which has been given mandate by a Member State or a Member State’s entity at central, regional or local level to carry out development or promotional activities (a promotional bank or another promotional institution). The entrusted entity can be selected or directly appointed in accordance with the provisions of Directive 2014/24/EU of the European Parliament and of the Council<sup>12</sup> or in accordance with Article 38(4), point (b)(iii), of Regulation (EU) No 1303/2013 of the European Parliament and of the Council<sup>13</sup> or Article 59(3) of Regulation (EU) 2021/1060 of the European Parliament and of the Council<sup>14</sup>, whichever is applicable;
- (n) ‘private investors’ mean investors who, irrespective of their ownership structure, pursue a purely commercial interest, use their own resources and bear the full risk in respect of their investment, and include, in particular: credit institutions investing at own risk and from own resources, private endowments and foundations, family offices and business angels, corporate investors, insurance undertakings, pension funds, academic institutions, as well as natural persons who either conduct an economic activity or not. A legal entity that carries out financial activities on a professional basis which has been given a mandate by a Member State or a Member State’s entity at central, regional or local level to carry out development or promotional activities (national promotional bank or another promotional institution), will not be considered private investors for the purposes of this definition.
- (o) ‘quasi-equity (investment)’ means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which is unsecured in the event of default; quasi-equity investments may be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity.

### **3. COMPATIBILITY ASSESSMENT UNDER ARTICLE 107(3), POINT (C), OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION**

- (10) On the basis of Article 107(3), point (c), of the Treaty on the Functioning of the European Union (the ‘Treaty’), the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities or of certain economic areas (positive condition), where such aid does not adversely affect trading conditions to an extent contrary to the common interest (negative condition).

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<sup>12</sup> OJ L 94, 28.3.2014, p. 65.

<sup>13</sup> OJ L 347, 20.12.2013, p. 320.

<sup>14</sup> OJ L 231, 30.6.2021, p. 159.

### 3.1. POSITIVE CONDITION: THE AID FACILITATES THE DEVELOPMENT OF AN ECONOMIC ACTIVITY

- (11) As regards the positive condition that the aid facilitates the development of a certain economic activities or areas, the Commission considers that aid under this Communication aims at incentivising investments and activities in certain sectors that contribute to the objectives defined in the Clean Industrial Deal Communication, thereby facilitating the development of specific economic activities, namely those falling within the scope of the relevant sections of this Communication.
- (12) State aid needs to have an incentive effect, meaning that it induces the beneficiary to undertake an investment or activity that it would not undertake, or would carry out in a restricted or different manner, absent the aid. An incentive effect is presumed where the start of works on the project or activity only takes place after a written aid application by the beneficiary to the national authorities<sup>15</sup>. Aid can however also be considered to have an incentive effect although the start of works took place before the submission of the aid application, where two cumulative criteria are met: (i) the aid is granted automatically in accordance with objective and non-discriminatory criteria and without further exercise of discretion by the Member State, and (ii) the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax advantages. Aid to private investors under section 7 can be considered to have an incentive effect where it incentivises private investors to provide funding to a portfolio of potentially viable eligible projects above the levels of funding that would have been provided in the absence of such aid or to assume additional risk, or both. For non-fossil flexibility support schemes and capacity mechanisms, there is an incentive effect provided that the conditions detailed in, respectively, sections 4.2 and 4.3 are met, irrespective of any start of works<sup>16</sup>.
- (13) For the investments and measures specified in this Communication, the Commission presumes that in the absence of the aid, beneficiaries would continue their activities without changes, provided that doing so would not entail a breach of Union law. This presumption does not apply for situations where a specific counterfactual scenario needs to be provided based on the conditions in the applicable sections of this Communication. Aid granted for investments that merely ensure compliance with Union standards<sup>17</sup> that are in force at the moment of granting the aid does not have an incentive effect.
- (14) If the supported project or activity, or the aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a violation of relevant Union law, the aid cannot be declared compatible with the internal market.

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<sup>15</sup> The aid application can take various forms, including for example a bid in a competitive bidding process. Any application must at least include the applicant's name, a description of the project or activity, including its location where relevant, and the amount of aid needed to carry it out. For the avoidance of doubt, such an aid application can pre-date this Communication.

<sup>16</sup> To preserve an efficient functioning of the electricity markets, such aid measures must be granted through an open competitive bidding process, where the incentive effect is reflected by the price offers submitted by eligible participants.

<sup>17</sup> 'Union standard' means Union standard within the meaning of point 19(89) CEEAG.

- (15) Member States are encouraged to include additional conditions when designing State aid measures to serve for instance social, environmental or resilience policy objectives as long as such conditions, do not breach Union law including Union international obligations or contradict more specific conditions in this Communication. Member States could in particular have regard to resilience requirements in EU funding instruments, such as the Innovation Fund. Member States are also encouraged to take tax solidarity considerations into account and can exclude from State aid measures entities that use tax havens to avoid contributing their fair share of tax to society.<sup>18</sup>
- (16) The Commission further notes the importance of circularity for achieving decarbonisation, reducing dependencies and enhancing economic competitiveness. Member States are encouraged to ensure that projects and activities supported by State aid under this Communication contribute to the circular economy to the largest extent possible.

### **3.2. NEGATIVE CONDITION: THE AID DOES NOT UNDULY AFFECT TRADING CONDITIONS TO AN EXTENT CONTRARY TO THE COMMON INTEREST**

- (17) As regards the second (negative) condition under Article 107(3), point (c), of the Treaty, to ensure that the aid does not unduly affect trading conditions to an extent contrary to the common interest, the Commission assesses the necessity, appropriateness and proportionality of the aid, verifies that undue negative effects on competition and trade are avoided and that the conditions on monitoring and reporting in section 8 are complied with.
- (18) Any aid must be necessary, meaning that it must be targeted towards a situation where it can bring about a material development that the market alone cannot deliver, for example by remedying market failures in relation to the projects for which the aid is awarded. In view of the need to accelerate the eligible investments and activities under this Communication, the Commission considers that the market alone would not be able to sufficiently deliver the necessary level of investments or activities within the timeline necessary to achieve a clean, just and competitive transition. The Commission therefore presumes that measures falling within the scope of this Communication and complying with all conditions in the applicable sections are necessary.
- (19) The Commission acknowledges in the Clean Industrial Deal Communication that financial incentives are required to incentivise necessary additional investments and that other policy instruments alone are not sufficient to achieve those goals. The Commission therefore presumes that State aid within the scope of this Communication is, in principle, an appropriate measure to incentivise the investments and activities eligible for aid provided all applicable conditions in the relevant sections are complied with. In addition, the choice of the aid instrument should be appropriate to the objective that the aid measure aims to achieve and likely to generate the least distortion of trade and competition. Provided that Member States comply with the conditions under this Communication, the Commission presumes that the aid instrument is also appropriate.

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<sup>18</sup> See Commission Recommendation of 14 July 2020 on making State financial support to undertakings in the Union conditional on the absence of links to non-cooperative jurisdictions, available here: [https://taxation-customs.ec.europa.eu/system/files/2020-07/recommendation\\_state\\_aid\\_tax\\_havens.pdf](https://taxation-customs.ec.europa.eu/system/files/2020-07/recommendation_state_aid_tax_havens.pdf).

- (20) Aid under this Communication will not be granted to undertakings in difficulty<sup>19</sup>.
- (21) Aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided project or activity. Proportionality is generally ensured if the aid amounts are determined through a competitive bidding process, because it provides a reliable estimate of the minimum aid required by potential beneficiaries. The Commission considers that the use of competitive bidding processes is particularly appropriate for measures aimed at a large number of sufficiently comparable projects, e.g. in the field of renewable energy production for larger projects applying mature technologies. Where competitive bidding processes are not suitable, including in light of the need to accelerate specific investments referred to in point (8), the relevant sections of this Communication allow Member States to determine aid amounts administratively based on maximum aid intensities or by reference to the funding gap in line with the specific conditions provided in the applicable section. Whenever the aid amount is calculated based on a funding gap, the scenarios used in that calculation must be based on realistic assumptions as part of a credible business plan. Where the counterfactual scenario corresponds to the beneficiary not carrying out any activity or carrying on its activity without changes, the NPV of the counterfactual scenario corresponds to zero and the funding gap can be approximated to the negative NPV of the investment in the factual scenario. This Communication provides in each section the specific applicable aid limits that the Commission will consider proportionate.
- (22) Unless otherwise provided in the specific sections, aid under this Communication can be granted in any form, including direct grants, tax advantages<sup>20</sup> including tax credits and accelerated depreciation, subsidised interest rates on new loans or guarantees on new loans. Where the aid is provided in a form other than grants, the amount of aid is expressed in gross grant equivalent, and the nominal amount of the tax advantage or the nominal amount of the underlying financial instrument such as a new loan or guarantee cannot exceed the eligible costs (where applicable).
- (23) Under this Communication, when assessing aid in favour of a beneficiary that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered<sup>21</sup>.
- (24) Subject to the specific conditions in section 7, where Member States decide to provide aid in the form of guarantees or loans that are channelled through credit institutions and other financial institutions as financial intermediaries, and in order to ensure that the aid granted is passed on directly, to the largest extent possible<sup>22</sup>, to the final beneficiaries, the following conditions will be respected:

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<sup>19</sup> Within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1.

<sup>20</sup> The aid cannot concern the reduction of taxes or levies which reflect the essential costs of providing energy or related services (for example, network charges or charges financing capacity mechanisms).

<sup>21</sup> See judgment of the Court of First Instance of 13 September 1995, TWD Textilwerke Deggendorf GmbH v Commission, Joined Cases T-244/93 and T-486/93, ECLI:EU:T:1995:160.

<sup>22</sup> Aid granted by Member States under this Communication to undertakings that is channeled through credit institutions as financial intermediaries must benefit those undertakings directly. However, it may confer an indirect advantage on the financial intermediaries. Nevertheless, under the safeguards provided under point (24) (a) and (b), such indirect advantages do not have the objective to preserve or restore the viability, liquidity or solvency of the credit institutions.



- (a) if guarantees are provided to credit institutions and other financial institutions as financial intermediaries, those financial intermediaries should, to the largest extent possible, pass on the advantages of the public guarantees to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates than without such public guarantees;
  - (b) if loans are provided to credit institutions and other financial institutions as financial intermediaries, those financial intermediaries should, to the largest extent possible, pass on the advantages of the subsidised interest rates on loans to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries without conditioning the granting of subsidised loans under this Communication to refinancing existing loans.
- (25) Based on the relevant experience and in view of the objectives pursued by the measures falling within scope of this Communication, the Commission presumes that such measures will not result in any manifestly negative effects on competition and trade in as far as they comply with all conditions in the applicable sections.
- (26) Aid granted under this Communication cannot be conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. Such conditions would be harmful to the internal market. Without prejudice to the specific safeguards included in section 6 of this Communication, this is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (27) Save as otherwise specified in this Communication, the Commission will in principle approve measures under this Communication for a maximum period of [5] years.
- (28) As a final step under Article 107(3), point (c), of the Treaty, the Commission has to balance the negative effects on competition and trading conditions of the aid measure with the positive effects of the planned aid on the supported economic activities, including its contribution to the clean, just and competitive transition and the Clean Industrial Deal objectives. Provided that the measures within the scope of this Communication comply with all conditions in the applicable sections, the Commission will typically find that the positive effects of the planned aid outweigh the negative effects on competition and trading conditions.

### **3.3. CUMULATION WITH OTHER STATE AID AND COMBINATION WITH CENTRALLY MANAGED EU FUNDS**

- (29) Save as specified otherwise in this Communication:
- (a) aid under this Communication can be cumulated with any other State aid or *de minimis* aid, or combined with centrally managed EU funds, as long as those measures concern different identifiable eligible costs;
  - (b) aid under this Communication can be cumulated with any other State aid or *de minimis* aid, or combined with centrally managed EU funds, in relation to the

same eligible costs, partly or fully overlapping, provided such cumulation does not lead the aid to exceed the highest support intensity or amount applicable under any of the relevant conditions.

#### **4. AID TO ACCELERATE THE ROLLOUT OF RENEWABLE ENERGY**

- (30) Beyond the existing possibilities available in accordance with Article 107(3), point (c), of the Treaty, including under the CEEAG, the Clean Industrial Deal recognises the need to fast-track the rollout of renewable energy sources thereby contributing to the overall global competitiveness of the economic activities falling within scope of this Communication. In this context, it is essential to facilitate investments to accelerate and expand the availability of renewable energy in a cost-effective way with a view to quickly reducing dependency on fossil fuels imports, accelerate the energy transition and achieve lower and less volatile energy prices.
- (31) The increase in the share of renewable sources in the energy system might result in a higher variability of energy generation patterns. Therefore, the accompanying rollout of flexibility sources and capacity mechanisms may be necessary to ensure that increasingly decarbonised electricity systems remain secure and deliver affordable energy.

##### **4.1. AID SCHEMES TO ACCELERATE THE ROLLOUT OF RENEWABLE ENERGY**

- (32) The Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, provided they comply with this section, together with section 3, aid measures to support:
- (a) investments for the production of energy from renewable sources as defined in Article 2 point (1) of Directive (EU) 2018/2001<sup>23</sup>, including the production of renewable fuels of non-biological origin (RFNBOs)<sup>24</sup> but excluding the production of electricity from RFNBOs;
  - (b) investments in storage for RFNBOs, biofuels, bioliquids, biogas (including biomethane) and biomass fuels that obtain at least 75 % of its content from a directly connected RFNBOs, biofuels, bioliquids, biogas or biomass fuels production facility, on an annual basis.
- (33) In addition to the aid measures described in point (32), the Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, investment aid measures to support electricity storage<sup>25</sup> and thermal storage<sup>26</sup>, provided they comply with this section, together with section 3.

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<sup>23</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

<sup>24</sup> As defined in Article 2, point (36), of Directive (EU) 2018/2001.

<sup>25</sup> Electricity storage means deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy.

<sup>26</sup> Thermal storage means deferring the final use of thermal energy to a moment later than when it was generated, or the conversion of electrical or thermal energy into a form of energy which can be stored, the storing of such energy, and, where appropriate, the subsequent conversion or reconversion of such energy into thermal energy for final use (i.e., heating or cooling).

- (34) Where investment aid is granted to support electricity storage, Member States must commit to ensure, within 2 years from the notification of the Commission's decision authorising the measure, that:
- (a) demand response and storage, independently of the voltage level to which the assets are connected, have the possibility to:
    - (i) sell and buy electricity in the day-ahead and intra-day markets;
    - (ii) participate in any frequency and non-frequency ancillary service where demand response and/or storage could provide the required service;
    - (iii) participate in market-based redispatching and/or be eligible to provide congestion management services for Transmission System Operators (TSOs) and/or Distribution System Operators (DSOs);
  - (b) aggregators, including independent aggregators, can participate in the markets and services listed in point (a).

Moreover, Member States are invited to take into account the findings regarding market failures in their flexibility needs assessment within the meaning of Article 19e of Electricity Regulation, once available, in any subsequent decision on the establishment of a scheme of investment aid for electricity storage.

- (35) Where the aid is granted for the production of RFNBOs, the Member State must ensure that the RFNBOs are produced from renewable energy sources in accordance with the methodologies set out in Directive (EU) 2018/2001 and its implementing or delegated acts.
- (36) Where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria set out in Directive (EU) 2018/2001 and its implementing or delegated acts.
- (37) With the exception of offshore wind, hydropower, including hydro storage, and renewable hydrogen production installations, supported projects must be completed and be in operation within [36] months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met.
- (38) Aid will be granted on the basis of a scheme with an estimated capacity volume and budget. A scheme can be limited to one or several technologies covered in points (32) and (33) but must not include any artificial limitation or discrimination, including in the award of licences, permits or concessions when they are required.
- (39) The Member State must ensure compliance with the 'do no significant harm' principle.

#### **4.1.1. INVESTMENT AID TO ACCELERATE THE ROLLOUT OF RENEWABLE ENERGY**

- (40) Investment aid to accelerate the rollout of renewable energy, including investment aid for energy storage, will be granted with respect to newly installed or repowered

capacities<sup>27</sup>. The aid amount will be independent from the energy output. In case of repowered capacities, only the additional costs in relation to the repowered capacity are eligible for aid.

- (41) The eligible costs will be the total investment costs.
- (42) Aid can be granted through a competitive bidding process or administratively on the basis of data on the eligible costs of each supported project provided that it does not exceed 45 % of said costs in the latter case. The aid intensity can be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.
- (43) By way of derogation from point (42), where aid is granted to the production of electricity from renewable sources<sup>28</sup>, it will always be allocated by means of a competitive bidding process, with the exception of small projects when the aid granted per undertaking per project does not exceed EUR 30 million. The following projects will be considered to be small projects:
  - a. projects with installed capacity equal or below 1 MW; or
  - b. demonstration projects with an installed capacity equal or below 6 MW; or
  - c. projects with an installed capacity equal or below 6 MW, if they are 100 % owned by SMEs and/or renewable energy communities<sup>29</sup> and/or by citizen energy communities<sup>30</sup>; or
  - d. for wind generation only, projects with an installed capacity equal or below 18 MW, if they are 100 % owned by small and microenterprises and/or by renewable energy communities and/or by citizen energy communities.
- (44) Aid under this section can only be cumulated with aid under section 4.1.2 of this Communication if the notified aid scheme foresees that possibility at the time of its initial notification.

#### **4.1.2. DIRECT PRICE SUPPORT SCHEMES**

- (45) Direct price support schemes for the production of renewable energy will comply with the criteria in section 3 and this subsection.
- (46) For electricity generation from renewable energy, aid will take the form of two-way contracts for difference<sup>31</sup> designed in line with the principles of Article 19d(2) of the Electricity Regulation, and will be granted only to newly installed or repowered

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<sup>27</sup> 'Repowering' means renewing power plants that produce renewable energy, including the full or partial replacement of installations or operation systems and equipment for the purposes of replacing capacity or increasing the efficiency or capacity of the installation.

<sup>28</sup> Including for example solar photovoltaic, onshore and offshore wind, and hydropower installations.

<sup>29</sup> As defined in Article 2, point (16), of Directive (EU) 2018/2001.

<sup>30</sup> As defined in Article 2, point (11), of Directive (EU) 2019/944.

<sup>31</sup> A two-way contract for difference means a contract between a power-generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration. The contract must be designed to preserve incentives for the generating facility to operate and participate efficiently in the energy markets.

capacities<sup>32</sup>. The contract duration will not exceed 25 years after the aided installation starts operations<sup>33</sup>.

- (47) The eligible cost will be the expected net cost estimated taking into account all main costs and revenues incurred over the lifetime of the project and any aid already received, discounted by the weighted average cost of capital (WACC).
- (48) Aid can be granted through a competitive bidding process. Alternatively, Member States can grant aid administratively. In this case, the NRA will set the strike price of the two-way contracts for difference to cover the eligible cost as defined in point (47).
- (49) Where aid is granted to the production of electricity from renewable sources<sup>34</sup>, it will be granted only in a competitive bidding process, with the exception of small projects (as defined in point (43) when the aid granted per undertaking per project does not exceed EUR 30 million).
- (50) Aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative<sup>35</sup>.

#### **4.2. AID FOR NON-FOSSIL FLEXIBILITY SUPPORT SCHEMES**

- (51) The Commission will consider aid for the promotion of non-fossil electricity flexibility, as indicated in Article 19g and 19h of the Electricity Regulation, as compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty under this Communication<sup>36</sup> provided the conditions described in section 3 and in this section are met.
- (52) The measure should be designed to support new investment in non-fossil flexibilities, while preventing undue distortions to the efficient functioning of electricity markets.
- (53) The measure will be open to non-fossil technologies capable of providing the flexibility services and at least to storage of electricity and demand response. The scheme must not include any artificial limitation or discrimination (including in the award of licences, permits or concessions when they are required). The measure can only include additional technical requirements on the basis of identified system needs in line with point (60).

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<sup>32</sup> As defined in footnote 21.

<sup>33</sup> The support payments under the contract must be limited to 25 years but Member States are free to require installations to continue making paybacks under the contracts for as long as the supported facility continues operating.

<sup>34</sup> Including for example solar photovoltaic, onshore and offshore wind, and hydropower installations.

<sup>35</sup> Small-scale renewable electricity installations and demonstration projects can benefit from direct price support that covers the full costs of operation and does not require them to sell their electricity on the market, in line with the exemption in Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale if their capacity is below the applicable threshold in Article 5 of the Electricity Regulation. Demonstration projects are projects which demonstrate a technology as a first of its kind in the Union and represent a significant innovation that goes well beyond the state of the art.

<sup>36</sup> This is without prejudice of the assessment of other flexibility measures under CEEAG.

- (54) Aid under this section will be granted on the basis of a scheme with an estimated capacity volume and budget.
- (55) Member States must commit to ensure, within 2 years from the adoption of the Commission's decision authorising the measure, that:
- (a) all non-fossil flexibility technologies, including demand response and storage, independently of the voltage level to which the assets are connected, have the possibility to:
    - (i) sell and buy electricity in the day-ahead and intra-day markets;
    - (ii) participate in any frequency and non-frequency ancillary service where demand response and/or storage could provide the required service;
    - (iii) participate in market-based redispatching and/or be eligible to provide congestion management services for Transmission System Operators (TSOs) and/or Distribution System Operators (DSOs);
  - (b) aggregators, including independent aggregators, can participate in the markets and services listed in point (a).
- (56) Member States must confirm that any mitigation measures identified in the flexibility needs assessment, following Article 19e(2)c of the Electricity Regulation, will be implemented within 2 years after the publication of the report referred to in Article 19e(1) of the Electricity Regulation.
- (57) If a capacity mechanism is implemented in the Member State concerned, the design of this capacity mechanism should be open to the participation of non-fossil flexibility such as demand response and storage to this capacity mechanism and promote their development in this capacity mechanism<sup>37</sup>.
- (58) The volume of flexibility to procure should be set according to the European methodology and guiding criteria introduced in Article 19e of the Electricity Regulation in view of the need to cost-efficiently achieve security and reliability of supply and decarbonise the electricity system.
- (59) Pending the development of such methodology and guidance, the flexibility volume to procure should not exceed the provisional indicative national flexibility objective described in Article 19f of the Electricity Regulation. In that case, the NRA must confirm that the flexibility volume to procure<sup>38</sup> reflects:
- (a) the flexibility needs assessed under the assumption that the market improvements detailed in points (55) and (56) have been implemented; and

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<sup>37</sup> In duly justified cases, the measure can envisage a limited transition period up to 2 years, during which market-wide capacity mechanisms and non-fossil flexibility measure can co-exist, for the integration of urgent measures for flexibility into a capacity mechanism, provided they remain proportionate and do not lead to overcompensation.

<sup>38</sup> This volume of flexibility can be based either on indicative national objective for non-fossil flexibility as defined in Article 19f of the Electricity Regulation or on provisional indicative national objectives until Article 19f of the Electricity Regulation allows it.

- (b) the market-based investment expected to take place, taking into account the market improvement mentioned in paragraph (a); and
  - (c) the cost-effective level of flexibility after considering alternatives such as additional renewable generation, grid development and an efficient level of renewables curtailment.
- (60) The technical conditions (such as pre-qualification requirements, availability or delivery obligations on participants<sup>39</sup>, as well as the unit of flexibility service used to rank offers, must be clearly justified based on specific needs identified in the need assessment described in point (58).
- (61) The aid is granted in the form of contracts covering a period no longer than 10 years providing a direct grant in exchange for the flexibility service.
- (62) The aid amount is determined through a competitive bidding process with bids ranked (and support awarded) according only to their price.
- (63) The contract should describe the methodologies followed to check the availability of the supported flexibility and to calculate the appropriate dissuasive penalties in case of non-availability or early termination of the contract. All beneficiaries must be activated (delivery or test) at least once per year with  $\leq$ [24hrs] notice. The non-availability penalty must be the same for all technologies and each beneficiary less than [50 %] available over a yearly period must be exposed to a penalty payment of at least its corresponding flexibility revenues over this yearly period.
- (64) The NRA must confirm that the availability requirements and penalties in the availability contract will not distort the functioning of the electricity markets. In particular, beneficiaries will be incentivised to efficiently participate to electricity markets and be exposed to price variation and market risks over the lifetime of the asset.
- (65) The Member State concerned must confirm that the scheme promotes<sup>40</sup> the opening of the scheme to cross-border participation of those resources that are capable of providing the required technical performance, where a cost-benefit analysis is positive.
- (66) In order to provide efficient incentives to adjust consumption to price signals, consumers that contribute to creating the flexibility need should participate to the costs of the measure, on the basis of their consumption in periods giving rise to the need for the flexible resources. If locational technical criteria are applied, the additional costs of applying those criteria should be allocated to electricity consumers in the relevant locations. The Commission considers that such contribution can be considered proportionate when it is at least equal to 90% of the costs of the measure<sup>41</sup>.
- (67) The measure is approved for a period of no longer than [5] years.

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<sup>39</sup> These technical conditions can for example take the form of locational requirements, minimum speed to ramp-up and/or ramp-down or a minimum activation duration.

<sup>40</sup> For the purpose of this point, 'promotes' means giving a competitive advantage to non-fossil flexibilities in capacity mechanism auctions (e.g. minimum level of non-fossil flexibility awarded a contract in a capacity mechanism).

<sup>41</sup> If the measure includes any requirements that direct deployment in specific locations (see point (60)) then the extra procurement costs associated with these locational requirements must be estimated and allocated to consumers located in the locations to which deployment is directed.

### **4.3. AID FOR CAPACITY MECHANISMS FOLLOWING A TARGET MODEL**

- (68) The Commission will consider aid for capacity mechanisms, as indicated in Articles 21 and 22 of the Electricity Regulation, as compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty provided the following conditions as well as the conditions in section 3 are met:
- The measure complies with all criteria for either a strategic reserve or market wide target model capacity mechanism provided in Annex I.
  - The measure is approved for a period of no longer than [10] years.

### **5. AID TO DEPLOY INDUSTRIAL DECARBONISATION**

- (69) Beyond the existing possibilities available in accordance with Article 107(3), point (c), of the Treaty, including under the CEEAG, the Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, aid for investments contributing significantly to reductions of greenhouse gas emissions from industrial activities to achieve the climate ambitions of the Union or leading to a substantial reduction of energy consumption in industrial activities through the improvement of energy efficiency, provided that the conditions in section 3 and this section are met.

#### **5.1. SCOPE**

- (70) For the purpose of this section, industrial activities are activities taking place in industrial installations and that involve the production of tangible final or intermediate goods at scale.
- (71) This section does not apply to:
- (a) State aid granted for the primary production of agricultural products and the primary production of fishery and aquaculture products<sup>42</sup>;
  - (b) State aid for the production of energy without prejudice to point (75);
  - (c) State aid that incentivises new investments in industrial production, including investments referred to in point (75), based on the most polluting fossil fuels, such as coal, diesel, lignite, oil, peat and oil shale.
- (72) Investments reducing greenhouse gas emissions or improving the energy efficiency of industrial activities can be eligible, irrespective of the technological solution used, provided they deliver (i) a reduction in direct greenhouse gas emissions resulting from the activity concerned compared to the situation without the aid, or (ii) a reduction of

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<sup>42</sup> 'Primary production of agricultural products' means the 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. 'Primary production of fishery and aquaculture products' means all operations relating to the fishing, rearing or cultivation of aquatic organisms, as well as on-farm or on-board activities necessary for preparing an animal or plant for the first sale, including cutting, filleting or freezing, and the first sale to resellers or processors.



at least [20]% in the energy consumption of the beneficiary's activity per unit of output compared to the situation without the aid<sup>43</sup>.

- (73) Investments aiming at the decarbonisation of industrial heat will prioritise (non-biomass-based) renewable heat, flexible direct electrification and the reuse of waste-heat, in particular below 400°C. Nevertheless, in duly justified cases, the use of other technologies can also be accepted but natural gas must deliver energy savings of at least [30]% or greenhouse gas emission savings of at least [60]%.
- (74) This section also covers aid for investments in an energy infrastructure<sup>44</sup> that forms an integral part of an investment under point (72) and when the infrastructure (i) is located on the project's site and dimensioned to the needs of that investment, or (ii) is developed solely to connect the beneficiary to an open infrastructure that is subject to third-party access in line with the legal framework applicable to the internal energy market.
- (75) This section covers aid for investments in the self-production of energy, provided that:
- (a) it is part of an investment under point (72);
  - (b) the energy is produced from renewable sources<sup>45</sup> including biomass, except for the generation of heat and high efficiency cogeneration of heat and power for which also natural gas can be used under the conditions set out in point (73); and
  - (c) either (i) the energy produced is used for at least [80]% in the beneficiary's own industrial activities at the project's site<sup>46</sup>, or (ii) in case of investments in high efficiency cogeneration, the heat produced is fully used by the beneficiary.
- (76) Aid under this section will be granted on the basis of a scheme with an estimated budget. Member States must provide an estimate of the total direct greenhouse gas emissions to be saved, or of the total energy savings to be achieved through the scheme. Aid under this section can only be granted in the form of direct grants, repayable advances, loans, guarantees or tax advantages<sup>47</sup>.
- (77) Schemes assessed under this section should in principle cover all sectors and technologies that can contribute to the objective set out in point (69). Member States that seek to limit the scheme's eligibility to certain sectors or technologies, must (i) justify such limited eligibility based on objective considerations, (ii) demonstrate why the limited eligibility of the scheme contributes to meeting EU and national climate

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<sup>43</sup> The level of energy savings must be calculated on the basis of the final energy consumption of the equipment(s) falling within the perimeter of the investment.

<sup>44</sup> This refers to infrastructure of the types listed in point 19(36) of the CEEAG.

<sup>45</sup> As referred to in point (32)(a).

<sup>46</sup> This assessment must be based on credible *ex ante* simulations as regards the energy production and expected demand from the project.

<sup>47</sup> Other forms of aid, namely direct carbon abatement support such as aid in the form of (Carbon) Contracts for Difference and feed-in premia, as well as tradable certificates are excluded under this section. Aid in those forms or other forms of direct carbon abatement support can be assessed under the CEEAG.

targets and (iii) demonstrate that the limited scope does not exclude technological solutions that are more efficient than the technologies eligible under the scheme.

- (78) Limiting the eligibility of a scheme is presumed to be justified for the purposes of point (77) if the scheme covers all industrial sectors covered by the EU Emissions Trading System (ETS).
- (79) To ensure that projects are implemented in a timely fashion and deliver the expected greenhouse gas emission savings, Member States must ensure that:
- (a) the installation or equipment to be financed by the aid is in operation within [36] months after the date of granting; and
  - (b) the project delivers direct greenhouse gas emission reductions or energy savings corresponding to at least [80%] of the projected reductions or savings.
- (80) The scheme should include an effective system of penalties in case that deadline or applicable thresholds are not met.
- (81) For aid schemes covering investments relying wholly or partly on the use of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, Member States must impose conditions requiring that those fuels are compliant with the sustainability and greenhouse gases emissions saving criteria set out in Directive (EU) 2018/2001 and its implementing or delegated acts.
- (82) For aid schemes covering investments relying wholly or partly on the use of hydrogen, Member States must impose conditions ensuring that projects use only renewable hydrogen<sup>48</sup>, or a combination of renewable hydrogen, hydrogen which is produced from biomass compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts, and low-carbon hydrogen<sup>49</sup>. In the latter case, the share of renewable hydrogen must equal at least the average share of electricity from renewable sources in the Member State concerned as measured two years before each year of operation [plus [10] percentage points].
- (83) For aid schemes covering also investments to deploy carbon capturing equipment<sup>50</sup>, Member States must ensure that projects covering investments in carbon capturing equipment will upon entry into operation:
- (a) connect to a net-zero strategic CO<sub>2</sub> storage project in accordance with Regulation 2024/1735 or to another complete carbon capture and storage or utilisation ('CCS' or 'CCU') chain; and

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<sup>48</sup> Hydrogen which is produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts ('renewable hydrogen').

<sup>49</sup> Low-carbon hydrogen as defined in Article 2(11) of Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen and its implementing or delegated acts.

<sup>50</sup> Investments in transport, storage and utilisation installations are not covered under this section. By way of exception, connecting infrastructure (to a network) can be covered under this section provided it complies with point (74).

- (b) result in the avoidance of direct greenhouse gas emissions taking into account the entire CCS or CCU chain.
- (84) Compliance with point (83) is presumed if the scheme provides that only projects are eligible that:
- (a) concern the installation of carbon capturing equipment to the extent that the captured CO<sub>2</sub> is (i) utilised in such a way that it has become permanently chemically bound in a product so that it does not enter the atmosphere under normal use, including any normal activity taking place after the end of the life of the product, or (ii) used for the production of synthetic fuels in accordance with applicable EU law; and/or
  - (b) concern the installation of carbon capturing equipment with a view to its permanent geological storage.

## 5.2. NECESSITY

- (85) Member States must demonstrate that the aid scheme is limited to supporting investments which would not take place without the aid, taking into account policy measures and mechanisms introduced to remedy the same market failure, including the ETS.
- (86) The Commission will presume that aid granted under the scheme complies with point (85) if the following conditions are met:
- (a) the scheme requires that beneficiaries submit a funding gap calculation to the Member State concerned as part of the aid application using the uniform funding gap template referred to in point (92), and only projects displaying the existence of a funding gap as defined in point (9)(f) are eligible for aid under the scheme; or
  - (b) for decarbonisation investments, the scheme contains the following requirements:
    - (i) in industrial installations subject to the ETS<sup>51</sup>, and by reference to the average emissions of the 10% most efficient installations, as determined by the implementing regulation in force at the time of scheme's publication for establishment of benchmarks pursuant to Article 10a of Directive 2003/87/EC ('most efficient installations'):
      - the investment reduces the installation's greenhouse gas emissions by at least [10]% when, before the investment, such emissions are at the level or below the most efficient installations; or
      - the investment reduces the installation's greenhouse gas emissions by at least [40]% and brings them below the relevant ETS benchmarks, when they were above most efficient installations; or

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<sup>51</sup> For the purpose of this point, the installation's greenhouse gas emissions must be measured at the level of the ETS relevant industrial product benchmark sub-installation, as defined in Article 2(2) of Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8.).

- the investment ensures that the installation's greenhouse gas emissions are at least [10]% below most efficient installations, if the investment concerns a new installation;
  - (ii) in installations in sectors that are not subject to the ETS, the scheme requires that the greenhouse gas emission reduction amounts to at least [40]% compared to the situation before the investment<sup>52</sup>.
- (87) The necessity of the aid is also presumed for investments in energy efficiency which cumulatively (i) fulfil all eligibility conditions under this section (see point (72)) and (ii) follow recommendations by the energy audit meeting the minimum criteria in Annex VI of the Directive (EU) 2023/1791.

### 5.3. PROPORTIONALITY

- (88) The Member State must ensure that the aid is allocated through a clear, transparent and non-discriminatory procedure on the basis of objective criteria<sup>53</sup>.
- (89) When planning an aid scheme under this section, in order to ensure the proportionality of the aid the Member State must select one of the alternative methodologies described in sub-sections 5.3.1, 5.3.2 or 5.3.3.

#### 5.3.1. AID INTENSITY

- (90) For individual aid amount up to EUR [200] million, the maximum aid amount under an aid scheme can be determined on the basis of the eligible costs of an investment, i.e. the total investment costs directly related to the achievement of the greenhouse gas emission savings or energy efficiency, and an aid intensity not higher than:
- (a) [50]% for investments enabling the use of hydrogen<sup>54</sup>;
  - (b) [30]% for investments in carbon capture equipment;
  - (c) [35]% for investments in the production of renewable energy, energy storage, or investments in electrification that use only fully renewable electricity;
  - (d) [20]% for all other technologies.

Where an investment falls under more than one of the categories listed in points (a) to (d), the lowest applicable aid intensity applies.

- (91) For investments made by small enterprises, the aid intensities under point (90) can be increased by 10 percentage points and for investments made by medium-sized enterprises, the aid intensities can be increased by 5 percentage points.

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<sup>52</sup> To ensure the comparability of projects, the Member State must develop a common methodology for calculating greenhouse gas emission savings for activities not covered by the ETS.

<sup>53</sup> This is without prejudice to the more specific requirements applicable to aid granted on the basis of a competitive bidding process.

<sup>54</sup> When the conversion to hydrogen use entails the conversion of other production processes at the same location, the aid intensity of [50%] also applies to those additional investments.

### 5.3.2. FUNDING GAP AND INDIVIDUAL NOTIFICATION

- (92) As an alternative to point (90), Member States can also choose to determine the maximum aid amount under an aid scheme as the funding gap of the eligible investment. Applicants under the scheme must be required to use a uniform template for calculating the funding gap. Member States need to set up the methodology they will follow to verify that cash flow projections underpinning NPV calculations are credible and coherent with the decarbonisation project.
- (93) Where Member States determine the aid amount based on point (92), a claw-back mechanism must be put in place. The calculation carried out under the claw-back mechanism must be checked based on separate accounting for the aided project, verified by an independent auditor. The claw-back mechanism must apply for the duration of the financial projections underlying the funding gap assessment and must include a terminal value of the project at the end of the planning horizon based on standard economic methodologies.
- (94) Where individual aid amounts based on aid intensity or funding gap methodology exceed the highest of EUR [200] million or [10%] of the scheme's budget per undertaking per project, a claw-back mechanism must be put in place, meeting the criteria laid down in point (93), while the project's funding gap and claw-back mechanism must be assessed by the Commission following a separate notification.

### 5.3.3. COMPETITIVE BIDDING

- (95) As an alternative to points (90) and (92), Member States can also choose to determine the maximum aid amount under an aid scheme by a competitive bidding process that complies with the following additional conditions:
- (a) The bidding process must be open to all eligible projects under the scheme that are delivering the same type of contribution to the environmental objectives of the measure, i.e. its contribution to greenhouse gas emissions avoidance or its contribution to energy efficiency improvements; and
  - (b) Potential bid caps to limit the maximum bid from individual bidders in particular categories must be justified with reference to funding gap calculations for reference projects<sup>55</sup>.

### 5.4. AVOIDANCE OF UNDUE NEGATIVE EFFECTS ON COMPETITION AND TRADE

- (96) Projects must deliver overall greenhouse gas emissions reductions. They must not merely result in the displacement of greenhouse gas emissions from the industrial sector concerned to the energy sector.
- (97) Indirect greenhouse gas emissions from the *hydrogen* used in decarbonisation projects that comply with the conditions set out in point (82) are deemed to be negligible and therefore do not need to be taken into account to verify that the projects deliver overall greenhouse gas emission reductions.
- (98) Indirect emissions from the *electricity* used in decarbonisation projects receiving aid under the scheme are deemed to be negligible and therefore do not need to be taken

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<sup>55</sup> 'Reference project' means an example project that is representative of the average project in a category of eligible beneficiaries for an aid scheme.

into account to verify that the projects deliver overall greenhouse gas emission reductions, if the scheme provides for any of the following conditions:

- (a) projects can only be located in bidding zones where in the previous calendar year either the average proportion of renewable electricity exceeded 90 %, or the emission intensity of electricity was lower than 18 gCO<sub>2</sub>eq/MJ;
  - (b) projects can only use fully renewable electricity;
  - (c) the expected increase in electricity demand stemming from the scheme can be entirely covered by an increase in supply of renewable or low-carbon electricity, as projected in the most recent National Energy and Climate Plan ('NECP') of the Member State concerned or by more updated plans to increase renewable or low-carbon power generation, if these are adopted after the latest update of the NECP. The expected increase in demand must not increase peak demand or lead to increase in electricity production from fossil fuel-based power generation.
- (99) In all other cases, Member States must demonstrate that indirect greenhouse gas emissions linked to the eligible projects do not offset direct greenhouse gas emission reductions achieved through the investment<sup>56</sup>.
- (100) Member States must ensure that aid for decarbonisation does not displace investments into cleaner alternatives that are already available on the market, or lock in certain technologies, hampering the wider development of a market for and the use of cleaner solutions. Therefore, schemes that incentivise new investments for decarbonisation in industrial production based on natural gas as means to reduce emissions or increase energy efficiency are only covered by this section, if the Member State demonstrates that such aid (i) does not create lock-in effects for fossil fuels; and (ii) does not displace cleaner alternatives that are available.
- (101) The conditions set out in point (100) are deemed satisfied if the scheme provides for the following cumulative conditions:
- (a) The natural gas-consuming equipment must be capable of being operated using exclusively hydrogen or other renewable or low-carbon gases, without substantial additional investments or the need to replace the equipment;
  - (b) beneficiaries must commit to phase out natural gas, and substitute it with hydrogen complying with the conditions in point (82) or other renewable or low-carbon gases by the end of the project's lifetime; the scheme provides for an effective system of penalties in case of non-compliance with this commitment, which the Member State commits to monitor.
- (102) Schemes allowing aid for the installation of carbon capturing equipment with a view to its storage or utilisation are considered to comply with the condition in point (98) if the scheme provides that those projects are only eligible where the equipment complements other decarbonisation solutions to cater for residual greenhouse gas emissions from sectors that are technically unable to achieve full decarbonisation.

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<sup>56</sup> Member States can demonstrate that this is the case based on the scheme's design (e.g. where the scheme requires that additional electricity demand is covered by a directly connected renewable electricity installation) or on simulations of greenhouse gas emissions calculations per reference project.

- (103) The Member State must demonstrate that the aid does not finance an increase of the overall production capacity of the beneficiary. This is without prejudice to limited capacity increases resulting from technical necessity not exceeding [5%] compared to the situation before the aid.

#### **5.5. SCHEMES TO SUPPORT SPECIFIC INNOVATION FUND PROJECTS**

- (104) In addition to the provisions laid down in Section 4 and Section 5.1 to 5.4, this subsection contains specific compatibility conditions for renewables and decarbonisation projects that have been positively assessed under the Innovation Fund. The selection criteria applied under the Innovation Fund for these types of projects present several safeguards minimising competition distortions and limiting the support granted to the minimum needed. Accordingly and provided they comply with this subsection and section 3, the Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, aid measures to support investments set out in point (32) and (69) for projects that have been awarded a ‘Sovereignty Seal’ referred to in Article 4 of Regulation (EU) 2024/795<sup>57</sup>.
- (105) Where the aid is granted for the production of RFNBOs, the Member State must ensure that the RFNBOs are produced from renewable energy sources in accordance with the methodologies set out in Directive (EU) 2018/2001 and its implementing or delegated acts.
- (106) Where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria set out in Directive (EU) 2018/2001 and its implementing or delegated acts.
- (107) In relation to investments relying wholly or partly on the use of hydrogen, Member States must impose conditions ensuring that projects use only renewable hydrogen<sup>58</sup>, or a combination of (i) renewable hydrogen, (ii) hydrogen which is produced from biomass compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts, and (iii) low-carbon hydrogen<sup>59</sup>. In the latter case, the share of renewable hydrogen must equal at least the average share of electricity from renewable sources in the Member State concerned as measured two years before each year of operation plus [10] percentage points.

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<sup>57</sup> Regulation (EU) 2024/795 of the European Parliament and of the Council of 29 February 2024 establishing the Strategic Technologies for Europe Platform (STEP). This Seal is awarded to all Innovation Fund projects that have been assessed under the Innovation Fund and that comply with the minimum quality requirements set out for in a relevant call for proposals under Commission Delegated Regulation (EU) 2019/856 of 26 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council with regard to the operation of the Innovation Fund ([OJ L 140, 28.5.2019, p. 6](#)).

<sup>58</sup> Hydrogen which is produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts (‘renewable hydrogen’)

<sup>59</sup> Low-carbon hydrogen as defined in Article 2(11) of Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen and its implementing or delegated acts.

- (108) In relation to investments to deploy carbon capturing equipment<sup>60</sup>, Member States must ensure that projects covering investments in carbon capturing equipment will upon entry into operation:
- (a) connect to a net-zero strategic CO<sub>2</sub> storage project in accordance with Regulation 2024/1735 or to another complete carbon capture and storage or utilisation ('CCS' or 'CCU') chain; and
  - (b) result in the avoidance of direct greenhouse gas emissions taking into account the entire CCS or CCU chain.
- (109) Projects must deliver overall greenhouse gas emissions reductions. They must not merely result in the displacement of greenhouse gas emissions from the industrial sector concerned to the energy sector.
- (110) Indirect greenhouse gas emissions from the *hydrogen* used in decarbonisation projects that comply with the conditions set out in point (107) are deemed to be negligible and therefore do not need to be taken into account to verify that the projects deliver overall greenhouse gas emission reductions.
- (111) Indirect emissions from the *electricity* used in decarbonisation projects are deemed to be negligible and therefore do not need to be taken into account to verify that the projects deliver overall greenhouse gas emission reductions, if the scheme provides for any of the following conditions:
- (a) projects can only be located in bidding zones where in the previous calendar year either the average proportion of renewable electricity exceeded 90 %, or the emission intensity of electricity was lower than 18 gCO<sub>2</sub>eq/MJ; or
  - (b) projects can only use fully renewable electricity; or
  - (c) the expected increase in electricity demand stemming from the scheme can be entirely covered by an increase in supply of renewable or low-carbon electricity, as projected in the most recent National Energy and Climate Plan ('NECP') of the Member State concerned or in more updated plans to increase renewable or low-carbon power generation, if these are adopted after the latest update of the NECP. The expected increase in demand must not increase peak demand or lead to an increase in electricity production from fossil fuel-based power generation.
- (112) In all other cases, Member States must demonstrate that indirect greenhouse gas emissions linked to the eligible projects do not offset direct greenhouse gas emission reductions achieved through the investment<sup>61</sup>.
- (113) Member States must ensure that aid for decarbonisation does not displace investments into cleaner alternatives that are already available on the market, or lock in certain

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<sup>60</sup> Investments in transport, storage and utilisation installations are not covered under this section. By way of exception, connecting infrastructure (to a network) can be covered under this section provided it complies with point (74).

<sup>61</sup> Member States can demonstrate that this is the case based on the scheme's design (e.g. where the scheme requires that additional electricity demand is covered by a directly connected renewable electricity installation) or on simulations of greenhouse gas emissions calculations per reference project.



technologies, hampering the wider development of a market for and the use of cleaner solutions.

- (114) New investments for decarbonisation in industrial production based on natural gas as means to reduce emissions or increase energy efficiency are only covered by this section, if the following cumulative conditions are met:
- (a) The natural gas-consuming equipment must be capable of being operated using exclusively hydrogen or other renewable or low-carbon gases, without substantial additional investments or the need to replace the equipment;
  - (b) beneficiaries must commit to phase out natural gas, and substitute it with hydrogen complying with the conditions in point (107) or other renewable or low-carbon gases by the end of the project's lifetime; the scheme provides for an effective system of penalties in case of non-compliance with this commitment, which the Member State commits to monitor.
- (115) In relation to projects involving the installation of carbon capturing equipment with a view to its storage or utilisation the equipment must complement other decarbonisation solutions to cater for residual greenhouse gas emissions from sectors that are technically unable to achieve full decarbonisation.
- (116) The Member State must demonstrate that the aid does not finance an increase of the overall production capacity of the beneficiary. This is without prejudice to limited capacity increases resulting from technical necessity not exceeding [5%] compared to the situation before aid.
- (117) Aid shall be granted on the basis of a scheme with an estimated budget.
- (118) Member States may set up schemes covering either one or both of the following categories of projects:
- (a) projects that have been awarded a Sovereignty Seal but that have not been selected for funding in line with Commission Delegated Regulation (EU) 2019/856;
  - (b) projects that have been awarded a Sovereignty Seal, and that have been selected for funding in line with Commission Delegated Regulation (EU) 2019/856.
- (119) When allocating aid under a scheme assessed under this sub-section to projects eligible under the scheme, Member States must follow the ranking established for selecting projects following a call for proposal under Commission Delegated Regulation (EU) 2019/856.
- (120) When putting in place an aid scheme under this section, the Member State must select one of the alternative methodologies for establishing the aid amount described in points (90) to (94).
- (121) For projects referred to under point (118)(a), as an alternative to point (120), Member States may also establish the aid amount in line with the method of calculating the maximum funding as laid down in the Delegated Regulation (EU) 2019/856 complemented with an effective clawback mechanism. The clawback mechanism must include all of the following features:

- (a) The clawback mechanism must address the occurrence of additional gains that were not forecasted when the aid amount was established.
- (b) The clawback mechanism is applied for the first time 5 years, and for the last time 10 years after a project's entry into operation as defined under the applicable Innovation Fund call.
- (c) The calculation carried out under the claw-back mechanism must be checked based on separate accounting for the aided project, verified by an independent auditor.
- (d) In the final application of the clawback mechanism, the project's terminal value must be taken into account.
- (e) The clawback mechanism must be designed in a way to keep incentives for the beneficiaries to minimise their costs and implement the project in the most efficient manner over time with a State share set at no less than [70]% of the surplus.

## **6. AID TO ENSURE SUFFICIENT MANUFACTURING CAPACITY IN CLEAN TECHNOLOGIES**

(122) Provided that the conditions in section 3 and in this section are met, the Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, aid granted to incentivise investment projects that create additional manufacturing capacity for:

- (a) the production, including with secondary raw materials, of relevant equipment for the transition towards a net-zero economy, namely [batteries, solar panels, wind turbines, heat-pumps, electrolyzers, and equipment for carbon capture usage and storage (CCUS)] [*see also the corresponding question in the survey on other possible technologies listed in the Net Zero Industry Act<sup>62</sup>*]; and/or
- (b) the production, including with secondary raw materials, of key components designed and primarily used as direct input for the production of the equipment defined under point (a); and/or
- (c) the production of new or recovered related critical raw materials necessary for the production of the equipment or key components defined under points (a) and (b).

### **6.1. INVESTMENT AID SCHEMES**

(123) Aid for investment projects falling within the scope of point (122) can be granted on the basis of a scheme with an estimated budget provided that the conditions laid down in this subsection and in section 3 are met.

(124) Beneficiaries must apply for aid before the start of works and must provide the required information indicated in Annex II to this Communication to the Member State.

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<sup>62</sup> Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem (OJ L 2024/1735, 28.6.2024).

- (125) The eligible costs of the investment project supported by the aid are all investment costs in tangible (such as land, buildings, plant, equipment, machinery) and intangible assets (such as patent rights, licences, know-how or other intellectual property) required for the production or recovery of the goods listed in point (122). Intangible assets must: i) remain associated with the area concerned and must not be transferred to other areas; ii) be used primarily in the relevant production facility receiving the aid; iii) be amortisable; iv) be purchased under market conditions from third parties unrelated to the buyer; v) be included in the assets of the undertaking that receives the aid; and vi) remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs).
- (126) Where the investment project takes place outside assisted areas, the aid intensity cannot exceed 15 % of the eligible costs and the aid amount cannot exceed EUR 75 million per project. Where the investment project takes place in an assisted area under Article 107(3), point (c), of the Treaty, the aid intensity cannot exceed 20 % of the eligible costs and the aid amount cannot exceed EUR 100 million per project. Where the investment project takes place in an assisted area under Article 107(3), point (a), of the Treaty, the aid intensity cannot exceed 35 % of the eligible costs and the aid amount cannot exceed EUR 175 million per project.<sup>63</sup>
- (127) For investments made by small enterprises, the aid intensities set out in point (126) can be further increased by 20 percentage points and for investments made by medium-sized enterprises, the aid intensities can be increased by 10 percentage points.
- (128) For aid granted exclusively in the form of either loans or guarantees to SMEs or to large undertakings with at least a B (or equivalent) rating, Member States can use the following maximum amounts instead of calculating the gross grant equivalents:

	Alternative maximum loan amounts	SME bonus
Aid in the form of loans	<p>Non-assisted area: nominal loan amount up to 30% of eligible costs but not exceeding EUR 150 million</p> <p>Assisted area under Article 107(3), point (c), of the Treaty: nominal loan amount up to 40% of eligible costs but not exceeding EUR 200 million</p> <p>Assisted area under Article 107(3), point (a), of the Treaty: nominal loan amount up to 70% of eligible costs but not exceeding EUR 350 million</p>	The nominal loan amount in relation to eligible costs can be increased by 20 percentage points for investments made by small enterprises, and by 10 percentage points for investments made by medium-sized enterprises, up to the maximum of 75% of eligible costs for loans and 75% of eligible costs for guarantees (in relation to the underlying loan).
Aid in the form of guarantees	<p>Non-assisted area: nominal amount of underlying loan up to 45% of eligible costs but not exceeding EUR 225 million</p> <p>Assisted area under Article 107(3), point (c), of the Treaty: nominal amount of underlying loan up to 60% of eligible costs but not exceeding EUR 300 million</p> <p>Assisted area under Article 107(3), point (a), of the Treaty: nominal amount of underlying loan up to 75% of eligible costs but not exceeding EUR 525 million</p>	

<sup>63</sup> Member States have to ensure that these maximum aid amounts are not circumvented by artificially splitting up the aided projects.

- (129) To ensure that the investment is viable, the Member State must ensure that the aid beneficiary provides a financial contribution of at least 25 % of the eligible costs, through its own resources or by external financing, in a form that is free of any public support<sup>64</sup>.
- (130) The beneficiary must commit to maintain the investment in the area concerned for at least five years, or three years for SMEs, after the completion of the project. Such a commitment should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, no further aid can be awarded under this Communication to replace that plant or equipment.
- (131) Before granting the aid and on the basis of the information provided by the beneficiary as indicated in Annex II to this Communication, the granting authority must verify the concrete risks of the investment not taking place within the EEA.
- (132) The aid cannot be provided to facilitate relocation of production activities within the EEA. For this purpose, the beneficiary has to:
- (a) confirm that in the two years preceding the application for aid, it has not carried out a relocation to the establishment in which the aided investment is to take place; and
  - (b) commit not to carry out such relocation up to a period of two years after completion of the investment.

## 6.2. AD HOC AID

- (133) In addition, the Commission can approve individually notified aid for investment projects that fall within the scope defined in point (122), provided the conditions laid down in this sub-section, in points (124), (125) and (130), and in section 3 are met.
- (134) The aid amount cannot exceed the lower of the following: (i) the amount of subsidy<sup>65</sup> that the beneficiary could demonstrably receive for an equivalent investment in a third country outside the EEA; and (ii) the minimum amount needed to incentivise the aid beneficiary to realise the investment in the area concerned in the EEA rather than in the alternative location outside the EEA (funding gap).<sup>66</sup> The beneficiary must demonstrate that without the aid the planned investment would not take place in the EEA<sup>67</sup>. The Commission considers that an additional safeguard in form of a claw-back

<sup>64</sup> This is not the case for example for subsidised loans, public equity-capital loans or public participations which do not meet the market investor principle, State guarantees containing elements of aid, or public support granted within the scope of the *de minimis* rule.

<sup>65</sup> The notified aid and the subsidy (in whatever form) which the beneficiary could demonstrably receive in a third country jurisdiction outside EEA will be compared in discounted terms.

<sup>66</sup> In principle, it is unlikely that the Commission will consider compatible with Article 107(3), point (c), of the Treaty aid amounts exceeding the capital investment costs necessary to locate the project in the area concerned considering that such aid is unlikely to have an incentive effect.

<sup>67</sup> Relevant documentary evidence to underpin the counterfactual scenario referred to in Annex II of this Communication needs to be credible, i.e. genuine and relevant to the decision-making factors prevalent at the time of the decision by the aid beneficiary regarding the investment. Member States are invited to draw on genuine and official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Those documents need to be contemporary to the decision-making process concerning the investment or its location. Documents containing information on demand forecasts, cost

mechanism, meeting the criteria laid down in point (93), second and third sentence, is required in markets with an increased risk of future market volatility to ensure a fair distribution of additional gains that were not forecasted in the notified funding gap analysis.

- (135) Where the investment takes place outside assisted areas, the Member State must demonstrate that the investment could not be implemented as efficiently in an assisted area and that it is therefore reasonable for the aid beneficiary not to locate the investment in such assisted areas.
- (136) Where several locations in the EEA are under consideration for the investment, and if State aid under this subsection were to be granted to attract the investment to an area with a regional aid intensity as specified in the applicable regional aid map that is lower than in alternative EEA areas under consideration (or to a non-assisted area), this would constitute a negative effect on competition and trade that is unlikely to be compensated by any positive effect. In cases where in the alternative EEA locations the same regional aid intensity applies, the beneficiary must demonstrate that the location was chosen based on objective criteria irrespective of State aid. There is, by contrast, no such manifest negative effect on competition and trade where the beneficiary is able to demonstrate that the investment would not otherwise take place in such alternative EEA areas and would instead be diverted to a third country.
- (137) The beneficiary must commit to use for the production of goods defined in point (122) the latest commercially available state-of-the-art production technology from an environmental emissions perspective.
- (138) The Member State should demonstrate that with the additional manufacturing capacity created by the aided investment, the aid beneficiary will contribute to strengthen European autonomy by addressing an existing gap between demand and supply within the Union and not crowd out production capacity that is either already existing or is committed to be built.
- (139) When evaluating State aid under this subsection, the Commission will request all necessary information to consider whether the State aid is likely to result in a substantial loss of jobs in existing locations within the EEA. In that situation, and if the investment enables the aid beneficiary to relocate an activity to the target area, if there is a causal link between the aid and the relocation, this constitutes a negative effect on competition and trade that is unlikely to be compensated by any positive effects.

### **6.3. AID TO SUPPORT DEMAND FOR CLEAN TECHNOLOGY EQUIPMENT IN FORM OF ACCELERATED DEPRECIATION**

- (140) The Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty schemes providing for State aid in the form of accelerated depreciation granted to incentivise acquisition of clean technology equipment, provided that the conditions under this sub-section and section 3 are met.

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forecasts, financial forecasts, documents submitted to an investment committee and that elaborate on investment scenarios, or documents provided to the financial institutions could also be helpful in this respect.

- (141) The aid must be granted in the form of aid schemes that consist in accelerated depreciation, up to full and immediate expensing<sup>68</sup>, of costs incurred for the acquisition of eligible assets.
- (142) Eligible assets are [all relevant equipment for the transition towards a net-zero economy as defined in point (122)(a)].
- (143) The eligible assets must comply with all of the following conditions:
- (a) be used primarily for the activities of the beneficiary and remain associated with those activities for at least five years (or three years for SMEs);
  - (b) be depreciable;
  - (c) be purchased under market conditions from third parties unrelated to the buyer;
  - (d) be included in the assets of the beneficiary.
- (144) The costs of acquisition of the eligible assets must be incurred and the accelerated depreciation must start no later than the date of expiry of this Communication as defined in point (160).
- (145) Points (22), and (29)(b) do not apply to aid under this sub-section. Aid in the form of accelerated depreciation can be provided in addition to any other State aid, or support from centrally managed EU funds, in relation to the same eligible costs without the need to calculate its gross grant equivalent.

**7. AID TO REDUCE RISKS OF PRIVATE INVESTMENTS IN RENEWABLE ENERGY, INDUSTRIAL DECARBONISATION, CLEAN TECHNOLOGY MANUFACTURING AND ENERGY INFRASTRUCTURE**

- (146) In addition to the measures described in sections 4 to 6, Member States can choose to incentivise private investors to invest in projects within the scope of sections 4 to 6 in the areas of renewable energy, industrial decarbonisation and clean tech manufacturing, [as well as energy infrastructure within the framework of a legal monopoly<sup>69</sup>.]
- (147) The Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, aid schemes for reducing risks of private investments into portfolios of eligible projects, provided that the compatibility conditions in this section 7 and in section 3 are met.
- (148) Aid will be granted on the basis of a scheme to incentivise private investors to invest in portfolios of eligible projects within the scope of this section.
- (149) The aid will take the form of equity, loans (including subordinated loans) and/or guarantees provided to a dedicated fund or special purpose vehicle (SPV) that will hold the portfolio of eligible projects. The aid will aim to achieve risk and/or return incentives for private investors to invest in that fund or SPV, such as in the form of guarantees with a first-loss (counter) guarantee or equity investments with different

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<sup>68</sup> Immediate expensing is not allowed for assets depreciable over a period of more than 15 years.

<sup>69</sup> As set out in points 373 to 375 CEEAG.

share classes where investment returns are first allocated to private investors' share class and, above a defined return level, also to the Member State's share class. The duration of a loan or a guarantee on debt instruments must not exceed [ten] years in total and in the case of guarantees must in any event not exceed the maturity of the underlying debt instrument. The mobilisation of the guarantee is contractually linked to specific conditions which can go as far as the compulsory declaration of bankruptcy of the beneficiary undertaking, or any similar procedure. These conditions must be agreed between the parties when the guarantee is initially granted. In case of guarantees provided for a portfolio's equity and/or quasi-equity investments, eligible losses can only be covered by the guarantee at the moment when the fund or SPV is dissolved and all portfolio investments have been divested on market terms.

- (150) The investments from the fund or SPV into eligible projects can take the form of equity, quasi-equity, loans (including subordinated loans) and guarantees. The maximum nominal amount of an investment per individual project cannot exceed EUR [100 million]. Aid under this section can be cumulated with aid under the other sections of this Communication for the same project.
- (151) Member States shall implement aid schemes under this section via a financial intermediary or via an entrusted entity. The remuneration of the financial intermediary will conform to market practices. This condition is presumed to be met for financial intermediaries selected through an open, transparent and non-discriminatory selection procedure. The financial intermediaries will share part of the investment risks by either sufficiently co-investing their own resources or receiving a significant remuneration linked to performance, so as to ensure that their interests are permanently aligned with the interests of the Member State.
- (152) Member States will set out an investment strategy for the investment portfolio referred to in point (149) with an appropriate risk diversification policy aimed at achieving economic viability and providing long term investment opportunities for the private investors. A clear and realistic exit strategy will exist for each equity and quasi-equity investment from the portfolio into eligible projects. The financial intermediary or the entrusted entity will be responsible to implement this strategy and will select the eligible projects and the investors. In case of equity investments, the expected return on the portfolio investment that determines the allocation of return (as set out in point (154)(b)) will be fixed by the financial intermediary or by the entrusted entity.
- (153) The Commission considers that aid to private investors is limited to the minimum necessary when the private investors are selected for investments in a portfolio through an open, transparent and non-discriminatory selection procedure which is made in accordance with applicable Union and national laws, sets out clearly the policy objectives to be pursued by the investment and is aimed at establishing appropriate risk-reward sharing arrangements.
- (154) If a Member States does not provide for a an open, transparent and non-discriminatory selection procedure, the Commission considers that aid to private investors is limited to the minimum necessary in the following cases:
  - (a) As regards aid in the form of (subordinated) loans and guarantees to a portfolio of projects, when the aid to the investor is in the form of a first-loss protection of not more than [15%] of contractually defined losses and the risk taken by the State is reflected in a premium which is less than [25]% lower than the respective market-conform remuneration. The latter remuneration must be

estimated considering the riskiness of the final beneficiaries, the types of instruments covered, and the duration of the protection granted;

- (b) As regards aid in the form of equity investments into a portfolio of projects, when any preferred allocation of investment returns to the share classes held by private investors is capped at a fixed return rate not higher than [the expected return] on the portfolio investment and the share classes held by those private investors account for more than 75% of the portfolio volume. 75% of the investment returns above the fixed return rate are channelled to the share class owned by the Member State, with the remaining 25% of the investment returns above the fixed return rate are channelled to the share classes held by private investors.
- (155) When applying for aid under a scheme set up under the current section, private investors will have to present their investment strategy to the entrusted entity or the financial intermediary, including (i) the risk/return profile they envisage for their investment, and (ii) which safeguards they have in place to avoid any potential conflicts of interests (in particular as regards investments into projects by companies in which the investor(s) already have a non-negligible stake or prior exposure).

## **8. TRANSPARENCY, MONITORING AND REPORTING**

- (156) Member States must publish relevant information on each individual aid above EUR 100 000<sup>70</sup> granted under this Communication on the comprehensive State aid website or Commission's IT tool<sup>71</sup> within 6 months from the moment of granting.
- (157) Member States must submit annual reports to the Commission<sup>72</sup>.
- (158) Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.
- (159) The Commission can request additional information regarding the aid granted, in particular, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.

## **9. FINAL PROVISIONS**

- (160) The Commission applies this Communication from XXX. The Commission applies this Communication to all measures notified as of XXX, as well as to measures

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<sup>70</sup> Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III to Commission Regulation (EU) No 702/2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument will be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid can be indicated in ranges.

<sup>71</sup> The State aid transparency public search gives access to State aid individual award data provided by Member States in compliance with the European transparency requirements for State aid and can be found at <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

<sup>72</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.4.2004, p. 1.



notified prior to that date, including under the TCTF. The Commission will apply this Communication until 31 December 2030.

- (161) In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid<sup>73</sup> the Commission will apply this Communication to non-notified aid if the aid was granted on or after XXX, and the rules in force at the time when the aid was granted in all other cases.
- (162) This Communication replaces the TCTF adopted on 9 March 2023<sup>74</sup>. The TCTF is withdrawn with effect from XXX.

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<sup>73</sup> OJ C 119, 22.5.2002, p. 22.

<sup>74</sup> Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 101 17.3.2023, p. 3, as amended.

## ANNEX I - TARGET MODELS FOR CAPACITY MECHANISMS

To allow for the Commission’s swift assessment and approval of Member States’ notifications of capacity mechanisms under Union law, this annex lists the relevant criteria for the compatibility assessment under this Communication of two specific target models of capacity mechanism: a strategic reserve and a market-wide central buyer mechanism. Criteria related to the market-wide capacity mechanism model are identified with “MW” while criteria related to the strategic reserve model are identified with “SR”. Where these criteria are met, capacity mechanisms can be considered compatible with both the Article 107(3), point (c), of the Treaty and all relevant provisions laid down in Articles 20 to 27 of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (‘Electricity Regulation’).

In case some of these criteria are not met, the relevant measures might need to be assessed under the Guidelines on State aid for Climate, Environmental Protection and Energy (‘CEEAG’), section 4.8.

Req.	Scope	Description		
<b>Necessity of aid, incentive effect and compatibility with Electricity Regulation Articles 20(1), 21(1), 21(4), 22(1.c), and 23</b>				
1	SR, MW	<p>a) the latest available European Resource Adequacy Assessment (ERAA)<sup>1</sup> central reference scenarios approved by the European Union Agency for the Cooperation of Energy Regulators (ACER) must be the sole basis for identifying the need for a capacity mechanism. The reliability standard, calculated as the ratio of cost of new entry (CONE) / value of lost load (VOLL)<sup>2</sup>, must not be met in the Member State concerned at least as of the first delivery window (see criterion 17 below) within the approval period; and</p> <p>b) all parameters calculated to assess availability, such as any de-rating factors, must be in line with the ERAA assumptions and results<sup>3</sup>.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup> ‘European resource adequacy assessment (ERAA)’ refers to the European Resource Adequacy assessment described in article 23 of Electricity Regulation and in ACER Methodology for the European resource adequacy assessment of 2 October 2020.

<sup>2</sup> ‘Reliability standard’ means reliability standard as defined in Article 2, point 2 of the Annex I of the ACER Decision of 2 October 2020 on the Methodology for calculating the value of lost load, the cost of new entry, and the reliability standard; ‘Cost of new entry (CONE)’ means cost of new entry as defined in Article 2, point 2 of the Annex I of the ACER Decision of 2 October 2020 on the Methodology for calculating the value of lost load, the cost of new entry, and the reliability standard. ‘Value of lost load (VOLL)’ means value of lost load as defined in Article 2, point 9 of the Electricity Regulation. VOLL and CONE should be the figures provided by ACER as envisaged in the Commission’s 3 March 2025 Report on the assessment of possibilities of streamlining and simplifying the process of applying a capacity mechanism, once available. In the meantime, they should be calculated according to the ACER Decision of 2 October 2020 on the Methodology for calculating the value of lost load, the cost of new entry, and the reliability standard.

<sup>3</sup> De-rating is an adjustment to the installed capacity of a capacity resource to identify its contribution to the adequacy need (reflecting the different technical characteristics and different reliability of different resource types). *The de-rating factors used should be those published by ACER/ENTSO-E as envisaged in the Commission’s 3 March 2025 Report on the assessment of possibilities of streamlining and simplifying the process of applying a capacity mechanism, once available. In the meantime, they must correspond to the ratio between i) availability of the given technology during scarcity situations and ii)*

<b>Market failure and appropriateness of aid and compatibility with Electricity Regulation Articles 20(3-8) and 21(3)</b>			
2	SR, MW	Member State must have received an opinion from the European Commission after they submitted their market reform plan. If recommendations were made in the Commission opinion, the Member State must either have published an updated market reform plan for implementing all recommendations or commit to publishing such a plan within 3 months of the adoption of the State aid decision.	<input type="checkbox"/>
3	MW	Member State must confirm it has assessed whether a strategic reserve is capable of addressing the resource adequacy concern.	<input type="checkbox"/>
<b>Eligibility and compatibility with Electricity Regulation Articles 22(1), 22(4) and 26</b>			
4	SR, MW	In line with recital (20), the capacity mechanism must not be open to undertakings in difficulty. In line with recital (26), participation must not be conditional on relocation, and any outstanding recovery order will be taken into account in line with recital (23).	<input type="checkbox"/>
5	SR, MW	The capacity mechanism must be open to all technologies, beneficiaries and projects that meet transparent, objective and non-discriminatory technical and environmental requirements. No other criteria are included. Minimum size required for participation must not be above 1 MW and must allow aggregation.	<input type="checkbox"/>
6	SR, MW	Beneficiaries must meet the Electricity Regulation CO <sub>2</sub> emission limits. The Member State can apply more stringent CO <sub>2</sub> limits, calculated in line with ACER methodology.	<input type="checkbox"/>
7	SR, MW	The Member State confirms that de-rating factors have been set in accordance with criterion 1. The multiplication of the relevant de-rating factor by the installed capacity of one unit provides the default capacity value (in MW) which is eligible to participate in the capacity mechanism. Individual capacity providers are allowed to deviate from the default de-rating factor for the technology at issue (up to at least [15%] of the standard de-rating factor of that technology). In this case, capacity providers must face the risk of penalties related to their custom de-rating factor.	<input type="checkbox"/>
8	MW	The capacity mechanism must be open to cross-border participation in line with ACER methodology <sup>4</sup> . Maximum entry capacity must be set based on the ACER rules.	<input type="checkbox"/>
<b>Proportionality of aid and compatibility with Electricity Regulation Articles 22(1) and 22(3)</b>			
9	SR, MW	The volume auctioned should be calculated based on ERAA central reference scenario results so that the reliability standard, determined as described in criterion 1, is reached. A demand curve should be set so that demand is reduced proportionately if prices in the competitive bidding process exceed the CONE used to calculate the reliability standard. Bid	<input type="checkbox"/>

the installed capacity of the given technology. This calculation will be based on the latest available ERAA and will be updated at least every [2] years and be approved by the NRA.

<sup>4</sup> See ACER decision: *“Technical specifications for cross-border participation in capacity mechanisms”*.

		caps can be introduced. If bid caps are used they must:		
		a) be set at a level that avoids inefficient early closure of existing assets based on a detailed estimate of costs and revenues per reference project; or b) be accompanied by a process for individual resources to justify to the NRA an exception from the price cap based on their specific costs.		
10	MW	One main competitive bidding process for [75%]-[90%] <sup>5</sup> of the estimated volume required for the delivery window should take place [4]-[6] years ahead of the delivery window. Adjustment competitive bidding processes can be organised closer to delivery, taking into account the lead time for developing demand response and storage.		<input type="checkbox"/>
11	SR	Competitive bidding processes should take place no more than one year ahead of the delivery window.		
12	SR, MW	All participation rules and competitive bidding process requirements must be published at least 6 weeks before the deadline for submitting bids.		<input type="checkbox"/>
13	SR, MW	Beneficiaries must be identified through a competitive bidding process with bids ranked (and support awarded) according only to their price in EUR/de-rated MW/year of available capacity.		<input type="checkbox"/>
14	MW	Beneficiaries must be allowed to sell their capacity agreement to another undertaking, up to at least [6 months] before the start of the delivery window.		<input type="checkbox"/>
15	SR	Capacity agreements must have a duration of one year.		<input type="checkbox"/>
16	MW	Capacity agreements must in general cover one delivery window. Capacity agreements can have a duration of up to [15] years for capacity with CAPEX [ $\geq$ 500 000 EUR/de-rated MW] <sup>6</sup> . In Member States where the three largest undertakings active in electricity generation in the territory covered by the capacity mechanism control at least 75% of domestic installed de-rated generation, capacity agreements of at least [10] years must be available for projects exceeding the CAPEX threshold.		<input type="checkbox"/>
17	SR, MW	The delivery window must be a single fixed period of up to one year [between 1 November of year Y until 31 October of year Y+1.]		<input type="checkbox"/>
18	SR, MW	All beneficiaries must be activated (delivery or test) at least once per delivery window with $\leq$ [24hrs] notice.		<input type="checkbox"/>
19	SR, MW	Beneficiaries must face non-availability penalties whenever unavailable in a delivery period <sup>7</sup> or test. The non-availability payment must be the same		<input type="checkbox"/>

<sup>5</sup> If cross border capacity is not eligible to participate in the main auctions, at least 10% of the estimated volume required for the delivery window plus the maximum entry capacity must be demanded in the adjustment auctions.

<sup>6</sup> CAPEX refers to capital expenditure associated with a capacity resource that took place after a publication by the national authorities announcing the planned introduction of the capacity mechanism (conditional on the Commission's approval of the measure as required by Article 108(3) TFEU) and specifying the type of projects that the Member State proposes to be eligible and the point in time from which the Member State intends to consider such projects eligible. The proposed eligibility must not be unduly limited.

<sup>7</sup> Delivery period is a period where contracted resources are required to be available, or face penalties. For strategic reserves, see criterion 26 in this table. For a market wide capacity mechanism, it can comprise the entirety of a delivery window, or just a part of it.

		<p>for all technologies. A beneficiary less than [50 %] available in the delivery periods within a delivery window must be exposed to a penalty payment of at least its capacity revenues for the delivery window.</p> <p>Beneficiaries must not face penalties related to a lack of availability outside the delivery periods.</p> <p>Beneficiaries must pay unavailability penalties for the remaining life of a capacity agreement if they exit that capacity agreement early<sup>8</sup>.</p>		
20	MW	Beneficiaries must be able to sell ancillary services outside the delivery period and for any capacity not subject to a contract within the capacity mechanism <sup>9</sup> .		<input type="checkbox"/>
21	MW	If Member State applies both a capacity mechanism and a flexibility measure, or already has a flexibility measure in place, capacity should be jointly procured <sup>10</sup> .		<input type="checkbox"/>
22	SR	The profit of units participating in a strategic reserve must be the same, whether or not they are activated/dispatched.		
23	SR, MW	Aid to the same capacity resource from more than one aid measure can be cumulated so long as overcompensation is avoided. If the Member State allows aid under the capacity mechanism to be cumulated with aid under other measures, the publicly available capacity mechanism rules must clearly set out the method used to comply with this requirement.		<input type="checkbox"/>
24	SR	At least 90% of any capacity mechanism costs not recovered through imbalance charges allocated in accordance with Electricity Regulation Article 22(2) of the Electricity Regulation must be allocated to consumers based on their consumption during the [1] – [5]% highest price periods each year.		
25	MW	At least 90% of the capacity mechanism costs must be allocated to consumers based on their consumption during the [1] – [5]% highest price periods each year.		
<b>Avoidance of undue distortions to competition and trade and compatibility with Electricity Regulation Article 22(1-2)</b>				
26	SR	The Member State must confirm that the capacity mechanism meets the requirements in Electricity Regulation Article 22(2). This also defines the delivery period.		<input type="checkbox"/>

<sup>8</sup> Unless they are able to transfer their capacity agreement to another capacity provider in the secondary market. For multi-annual capacity agreements, the unavailability penalties can be limited to 4 years. Collateral can be required from capacity providers.

<sup>9</sup> The approach regarding the participation of contracted capacity to these services during the delivery period should be in line with the methodology of the adequacy assessment used to determine the need for and size of the measure. Capacity providers should be deemed available for the capacity mechanism and all other ancillary services simultaneously.

<sup>10</sup> This means that national authorities should set an objective for both flexibility needs and capacity mechanism needs to be procured during the same co-optimized auction. Participants provide their contribution to both the flexibility needs and to the capacity mechanism and offer a total price for the provision of the two services. The selection methodology should be such that it minimises the total cost of fulfilling both the flexibility needs and capacity mechanism needs, i.e. no alternative selections of beneficiaries can reach both flexibility needs and capacity mechanism needs at a lower cost.

27	SR	Availability is calculated as being equal to the power delivered <sup>11</sup> .	<input type="checkbox"/>
28	MW	Availability is calculated as the sum of i) the power delivered; and ii) the availability proposed on the short-term electricity markets and which did not result in an activation <sup>12 13</sup> .	<input type="checkbox"/>

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<sup>11</sup> For demand response: power not consumed.

<sup>12</sup> When the availability is checked, the capacity that is not necessarily activated as capacity activation must be driven by energy market price signals. The only exception to that is testing requirements for capacity which the market never activates.

<sup>13</sup> Member States must avoid any double counting when the same capacity is available for several market timeframes (e.g. day-ahead, intraday and balancing).

## ANNEX II

### Information to be included in the application form for aid under section 6.1 and 6.2

#### **i. Information about the aid beneficiary:**

- Name, registered address of main seat, main sector of activity (NACE code).
- Declaration that the undertaking is not in difficulty, as defined under the rescue and restructuring guidelines.
- For aid granted under a scheme under section 6.1: non-relocation declaration and commitments listed in point (132).

#### **ii. Information about the investment to be supported:**

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

#### **iii. Information about the financing of the investment:**

- Investment costs and other associated costs.
- Total eligible costs.
- Aid amount needed to carry out the investment in the area concerned.
- Aid intensity.
- For measures under section 6.2: A funding gap analysis, including the business plan and Net Present Value calculations for the factual and counterfactual scenarios, with estimated investment costs, operating costs, revenues and terminal value in both scenarios (in excel format), with supporting evidence.

#### **iv. Information on the need for aid and its expected impact:**

- Short explanation of the need for aid and its impact on the investment decision or location decision. This must include an explanation of the alternative investment or location decision if aid is not granted;
- For measures under section 6.2, the beneficiary must provide: (i) solid evidence of subsidies it would credibly receive in a non-EEA jurisdiction for a similar project included in the counterfactual scenario; (ii) evidence that without the aid the planned investment would not take place in the EEA; and (iii) evidence that the aid does not create counter-cohesion effects within the meaning of points (135) and (136).