

**State aid**  
**in the North-West Europe**  
**Programme**  
**Guidance document**

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## 1 The notion of State aid

### 1.1 What is State aid?

State aid is defined as any selective advantage the programme may give to a project partner in the context of their funded project, and where this advantage has the potential to distort competition or trade within the Union. During project preparation, assessment or implementation phases, it may turn out that some of the proposed project activities are State aid relevant because there are economic and give organisations advantage over competitors.

State aid is in principle forbidden as it may distort competition by favouring certain undertakings or the production of certain goods (which is incompatible with the internal market). However, there are several exceptions that allow for aid in certain areas, up to a specific amount (*de minimis*) or for certain actions that are crucial for the European economy (e.g. those activities that are specified in the General Block Exemption Regulation = GBER) and that address genuine market failures and limit distortions i.e. the benefits outweigh any negative effects on competition.

To clarify which measures can constitute State aid DG Comp prepared and published a 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, 2016/C 262/01<sup>1</sup> (on 19 July 2016). This document further discusses the criteria for determining State aid and presents *acquis communautaire* related to state aid that has been collected over the years

When assessing State aid relevance in a NWE project activities, the provisions in the Framework for State aid for research and development and innovation, 2014/C 198/01<sup>2</sup> and the Guidelines on State aid for environmental protection and energy 2014-2020, 2014/C 200/01<sup>3</sup> should be consulted.

### 1.2 Who is affected by the State aid rules?

All entities engaged in an economic activity fall under State aid rules, regardless of their legal status or if they aim to make a profit. This means that both public and private partners can be affected by State aid rules. Public institutions may perform economic activities (e.g. a regional council can implement a support scheme for SMEs) and are thus State aid relevant activities. On the other hand, the participation of an SME in a project does not necessarily mean that its activities are automatically State aid relevant.

### 1.3 On which basis is it possible to determine if the activities are State aid relevant or not?

In order to be considered State aid, a funded activity must fulfil the following 5 criteria which stem from the definition of State aid provided in the Article 107(1) of the Treaty on the Functioning of the European Union:

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<sup>1</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016XC0719\(05\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016XC0719(05))

<sup>2</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0627\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0627(01))

<sup>3</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0628\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0628(01))

**1. The aid is provided by the Member State and through State resources**

In case of NWE Programme the answer is always yes.

**2. The aid favours certain undertakings or the production of certain goods, in other words, the measure is selective.**

In case of NWE Programme the answer is always yes. There will be almost always some kind of selectivity, for example sectoral or geographic. The programme as such is geographically selective as it promotes interventions in North-West Europe and not the whole European Union, nor all the territories of Member States covered by the Programme, eg. in France, Germany or the Netherlands. Usually, measures are selective as well as they do not address all potential undertakings, but per the priority of the project with a focus on specific sectors (for example biobased industry, automotive industry etc.) or focused on specific undertakings (for example SMEs only).

**3. The aid affects (or potentially affects) trade between Member States**

In case of NWE Programme the answer is usually yes. The aid measures are intended not to be local, but transnational, therefore the answer is positive.

**4. Aid measure distorts (or potentially distorts) competition and has effect on trade.**

This criterion is closely related to the criterion 5 discussed below. If an undertaking receives a competitive advantage over its competitors, such a situation could potentially distort competition. For example, if a car producing company receives a grant or a tax exemption (not necessarily of significant value) it would be given a competitive advantage over its competitors as the cars produced by this company could be sold cheaper, which in turn could (potentially) distort competition.

**5. The aid measure confers an advantage to the undertaking**

While analyzing this criterion we need to decide two things. Firstly, we need to determine if the beneficiary is an undertaking so we need to know if the activity performed is an economic activity. Secondly, we need to consider if the undertaking (beneficiary) receives the advantage by participation in the project. The advantage is conferred upon when the two conditions are met: when a beneficiary performs **economic activities** AND they give them a **selective advantage**. As these two points are fundamental there are some auxiliary questions which help to state if the undertaking receives an advantage. The focus of the analysis is the scope of the project and the activities therein, not the customary activities of the beneficiary.

**Economic activity**

Economic activity means putting goods or services on the market. It is not necessary to make a profit to be engaged in economic activity, if others in the market offer the same or similar goods or service. However, if project activities are carried out to make a profit, it will increase the possibility of State aid occurrence. To determine if project activities are economic activities one of the following questions need to be answered positively:

- In the context of the project, does your organisation undertake any activities and/or develop/offer goods/services for which a market exists (even hypothetical market or one that exists in different Member States)?
- In the context of the project, does your organisation implement activities or provide goods/services that could be carried out or provided by an operator to make profit (even if this is not the intention of your institution)?
- In the context of the project, does your organisation plan to carry out the economic activities on your own i.e. not to select external service provider via public procurement procedure?
- Does your organisation plan to disseminate the goods/services achieved within the project on an exclusive and discriminatory basis; for example through restricted access to databases, publications or software?

Does your organisation, within the project, plans to carry out any activities involving construction of infrastructure, and will this infrastructure be exploited commercially and/or will it be available after payment of a fee? Financing of public infrastructure does not always automatically mean exemption from the application of State aid rules. As it is explained in the Commission notice, State aid funding of the infrastructure will not qualify as State aid if the infrastructure does not directly compete with other infrastructure of the same kind. This is typically the case for general infrastructure such as roads, railways, inland waterways and waste water networks. On the other hand, specific infrastructure, for instance airports or ports, is often in competition with similar infrastructure, which means that it will qualify as State aid,

### **(Selective) advantage**

Another condition that must be met is selective advantage. (Selective) advantage may take the shape of relieved costs that an organisation would normally bear.

If there is no selective advantage or benefit to the applicant or the cost relief is general and applicable to all the companies on the market, then there is no State aid. To determine if there is a selective advantage one of these two questions need to be answered positively:

- Does your organisation gain any benefits from the project which it would not have received in the normal course of business? Does your organisation receive any direct (positive aid in the form of subsidies etc.) or indirect (negative aid in the form of cost relief which it would have to bear in the normal course of business) advantage?

### **1.4 State aid granted by the project partner (downstream)**

The project might also involve project partners granting State aid “downstream” to other organisations. This means that the NWE subsidy will not be regarded as State aid. Such aid would only be deemed to be State aid in the case where project partners offer marketable services to undertakings. This might include offering free or partly paid services (by vouchers) such as trainings, advisory activities etc. to undertakings (e.g. SMEs) for which they would have to buy on the market, as they would not have received them under normal market conditions. To determine downstream State aid in a project, the following question should help:

- Does any economic operator (e.g. SMEs) that is outside the project partnership (i.e. not listed as project partner, sub-partner or associated partner in the application form)

receive an advantage through activities carried out by your organisation within the project?

If this question is answered positively, State aid will be deemed to be granted by project partners (which become “intermediaries”) to third parties who then fall under State aid rules. The project partners would then be required to meet the requirements of *de minimis* or GBER (e.g. ask for *de minimis* self-declarations, keep the register and inform SMEs about the amounts granted or apply special restrictions related to GBER). Alternatively, the project partners might exclude State aid relevant activities by either charging the market prices for services offered to SMEs, or by excluding selectivity i.e. offering services to all interested enterprises, across all sectors, and from all Member States.

### 1.5 NWE procedure to assess State aid relevance

State aid compliance in the NWE Programme will be assessed based on the planned activities described by project partners in the submitted application form. The initial assessment will be done when the step 1 application is submitted. A further and more in-depth State aid assessment will be performed during the step 2 application development, when the State aid plan is submitted, when the work packages, partner activities and project risks are described in detail in the AF. The partners will be then often advised of the State aid relevant activities and asked to take appropriate measures. The final State aid check takes place during the Step 2 project assessment and aims to identify all State aid relevant activities which had not already been spotted.

If State aid activities are identified, project partners should take into account that some restrictions may be applied (e.g. there will be a capping on ERDF contribution or the grant rate will be lowered).

It is crucial to spot it ex-ante to avoid ineligibility of costs and financial corrections which might follow if spotted ex-post (during the project implementation).

### 1.6 State aid plan

If project partners already know beforehand that some of their activities will be State aid relevant, they should decide which method will be used (See Point 1.7 below). This is to be done in the State aid plan (Annex 1). If the State aid relevant activities are identified by the programme bodies, the Lead Partner will be asked to fill in a State aid plan template during the implementation or just after the approval of the project by the Monitoring committee to determine the State aid approach to be applied to partners in the project.

### 1.7 Methods to deal with State aid in a project

In cases where State aid is identified in the project, there are four methods to deal with it:

1. Elimination of State aid relevant activities
2. Application of *de minimis*, in other words, minimise the amount so that it has marginal influence on the market, i.e. it causes no competition distortion
3. Application of one or several articles of the General Block Exemption Regulation (GBER)
4. Notification of the project to the European Commission

All these methods are discussed below and can be applied in the NWE Programme with specific restrictions<sup>4</sup>. The JS will provide guidance in this process. These methods involve some restrictions and special conditions must be met. Methods 2-4 require that additional documentation is submitted.

## 2 Elimination of State aid relevant activities

Project partners which want to avoid restrictions resulting from the application of *de minimis* or GBER may want to decide not to implement the State aid relevant activities, or implement them outside of the project.

## 3 *De minimis*<sup>5</sup>

The *de minimis* rule allows for State aid relevant activities, but only those that are of minimal financial importance, up to a threshold during a rolling three year period, subject to certain administrative steps being taken. The amounts of *de minimis* aid granted per Member State to a single undertaking within the last 3 financial years cannot exceed €200.000<sup>6</sup>. In practice, this means that the partner which meets the requirements of the single undertaking and which did not receive any *de minimis* aid within the last 3 fiscal years can receive up to €200,000 from several Member States within one project. In the context of NWE Programme the *de minimis* aid is granted by 6 Member States: Belgium, France, Germany, Ireland, the Netherlands, and the United Kingdom which means that a single undertaking can receive up to €1,200,000<sup>7</sup> of *de minimis* aid within one project if it did not receive any *de minimis* within the last 3 fiscal years.

### 3.1 Single undertaking

Single undertaking in the understanding of *de minimis* regulation means all enterprises having at least one of the following relationships with each other:

- (a) one enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
- (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

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<sup>4</sup> Eg. only certain articles of GBER are applied in the NWE Programme.

<sup>5</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid Text with EEA relevance, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1458746162354&uri=CELEX:32013R1407>

<sup>6</sup> In the road freight transport sector this threshold is decreased to €100,000 and will not apply for acquisition of road freight transport vehicles.

<sup>7</sup> This threshold was adopted by MC decision from 13 of September 2016 and is applicable as of Call 3. The threshold for Call 1 and Call 2 projects amounts to €200,000.



(d) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise. Enterprises having any of the relationships referred to in points (a) to (d) through one or more other enterprises shall also be considered a single undertaking.

Please note that enterprise means here any undertaking performing economic activity.

### 3.2 Exclusions

*De minimis* granted by NWE Programme (both direct and downstream) does not apply to:

- (a) aid granted to undertakings active in the fishery and aquaculture sector,
- (b) aid granted to undertakings active in the primary production of agricultural products;
- (c) aid granted to undertakings active in the sector of processing and marketing of agricultural products, in the following cases:
  - i. where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;
  - ii. where the aid is conditional on being partly or entirely passed on to primary producers;
- (d) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
- (e) aid contingent upon the use of domestic over imported goods.

### 3.3 Procedure and the calculation of *de minimis* amount to be granted

The undertaking receiving ERDF from the NWE Programme and that falls under the *de minimis* rule after step 2 approval will be asked to provide a self-declaration (Annex 1) listing all *de minimis* aids received within the last 3 fiscal years. The maximum ERDF grant rate will be calculated based on this declaration.

Consequently, if a beneficiary received any amount of *de minimis* in the last 3 fiscal years it will be deducted from the ERDF grant.

For example, a beneficiary applying in 2016 for a €1,200,000 ERDF who received within the last 3 fiscal years the following amounts:

<b>Beneficiary, project name and programme</b>	<b>Country granting the <i>de minimis</i> aid</b>	<b>Amount granted, in EUR</b>	<b>Date of granting</b>
Undertaking 1, grants for start-ups	Germany	€100,000	10.02.2014
Undertaking 1, tax exemption for year 2014	Germany	€50,000	11.05.2015
		<b>Total: €150,000</b>	

will be entitled to receive from ERDF the maximum of €1,050,000 (€1,200,000-€150,000=€1,150,000)

After the *de minimis* State aid is granted (i.e. the subsidy contract is signed), the programme will send a letter to the undertakings with the granted *de minimis* amount (Annex 2). These amounts will have to be taken into account when applying for further *de minimis* aid and included in future self-declarations in other aid schemes (similar to the one presented in Annex 1)

### 3.4 Downstream *de minimis*

Downstream *de minimis* works in a similar way as *de minimis* granted to the project partners by the programme. The same thresholds apply, but the difference is that the project partner responsible for distributing *de minimis* aid (eg. in a form of vouchers directed at SMEs or organizing trainings to SMEs) will be responsible for checking if an undertaking is entitled to receive *de minimis* aid (if it meets the requirements of a single undertaking) and in which amount by asking the undertaking to provide a *de minimis* self-declaration (Annex 3). Apart from that, the project partner will prepare and send a letter (Annex 4) to all undertakings which were granted *de minimis* aid stating the amount of aid granted.

To calculate the amount of *de minimis* granted, the Programme recommends to apply the real costs e.g. if an SME received support from an expert, calculate all the costs which were related to this support (For example expert hourly rate x number of hours, travel costs of the expert, the cost of organisation of the consultations etc.). If training was offered as *de minimis* aid calculate the total cost of the training (expert costs, catering, rental) and divide it by the number of participants.

The project partner will be obliged to keep documents regarding State aid available for 10 years from the date when aid was granted. If requested by the EC, these documents and any supporting documentation must be presented to the EC within 20 working days or longer, but only if it was fixed in the request.

## 4 General Block Exemption Regulation (GBER)<sup>8</sup>

### 4.1 General principles

State aid within the General Block Exemption Regulation can be granted based on the two schemes available<sup>9</sup> and which have been submitted to the European Commission. These two schemes were developed in view of State aid relevant projects in NWE Programme:

1. Framework scheme exempt from notification No. SA.40646 pertaining to aid covering the cooperation costs of SMEs, which belong to European Territorial Cooperation (ETC) programmes covering Article 20 and;

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<sup>8</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2014.187.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.187.01.0001.01.ENG);

General Block Exemption Regulation (GBER), Frequently Asked Questions, March 2016, [http://ec.europa.eu/competition/state\\_aid/legislation/practical\\_guide\\_gber\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf)

<sup>9</sup> Both schemes are available on Programme's website: <http://www.nweurope.eu/help-support/state-aid/>

2. Interreg North West Europe Programme aid for research and development and innovation (articles 25, 26, 27, 28, 29), training aid (article 31) and aid for environmental protection framework scheme 2014-2020 (articles 36, 38, 41, 45, 46, and 47) No. SA.45348

Schemes cover a selection of articles (sometimes called objectives) that determine eligible actions and costs, maximum intensity (co-financing from resources which are regarded as state resources) and, usually, maximum ceilings (projects with budgets exceeding these ceilings must be notified to the European Commission).

The schemes are restricted by the programme rules. This means that the scope of projects eligibility will always be in accordance with the programme rules.

Each partner can apply only one GBER article.

The data concerning individual aid over EUR 500,000 granted under GBER will be published on the State aid Transparency public search page<sup>10</sup> (please see the standard GBER project information template in Annex 6).

For some articles, specific eligibility rules apply. In practice, this means that for the partner(s) applying these articles, the eligibility will be restricted. For example, some budget lines will not be eligible or they will be entitled to finance only certain items. Article 47 states that the eligible costs are the extra investment costs necessary to realise an investment, leading to better or more efficient recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence the aid. Consequently, apart from the extra investment costs, no other costs will be eligible.

Even though some of the articles allow for 100 % maximum intensity (co-financing rate), the maximum ERDF co-financing rate applicable in the programme will be used i.e. 60 %.The rest may be used in cases where there are other state resources (public match-funding) used to finance the same project. For example, a project under Article 25 Aid for research and development, that has a State aid relevant activity related to fundamental research, can receive up to 60% from NWE Programme and up to 40 % from regional funds (state resources). However, a State aid relevant project under the same article, but related to experimental development, under which the maximum intensity amounts to 25 %, can receive up to 25 % co-financing from NWE Programme, and the 75 % of match funding must be provided from private resources.

The maximum intensity will be applied to all the partner activities (State aid relevant and non-State aid relevant). If a partner gets 50 % co-financing it will be applicable to all the activities in all the Work Packages, it will not be possible to increase the rate for non-State aid relevant activities.

In order for an enterprise to be considered small, medium or a large undertaking, it must meet the conditions specified in the Annex 7a. To facilitate the distinction, the Programme published an excel sheet (Annex 7b) which, after putting in the basic data will determine if said undertaking

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<sup>10</sup> <https://webgate.acceptance.ec.europa.eu/competition/transparency/public/search/home>

can be regarded as a small, medium or large-sized undertaking. In some GBER articles (eg. Article 25), the maximum intensity rate varies per the size of the undertaking, while in other articles (eg. Article 20), it is only available to SMEs. The size of the undertaking must be specified in the State aid plan and serves as a declaration by the partner. A false declaration on the size may lead to further financial corrections.

The staff headcount and financial thresholds determining enterprise categories are the following:

<b>Company category</b>	<b>Staff headcount</b>	<b>Turnover</b>	or	<b>Balance sheet total</b>
Medium-sized	< 250	≤ € 50 m		≤ € 43 m
Small	< 50	≤ € 10 m		≤ € 10 m
Micro	< 10	≤ € 2 m		≤ € 2 m

When assessing the size of the undertaking the data of the autonomous enterprise, partner enterprises and linked enterprises must be taken into account therefore the provisions of Annex 7a must always be respected.

The undertaking granted GBER cannot be in difficulty (definition in Annex 8) or subject to an outstanding recovery order<sup>11</sup>.

All undertakings applying GBER will have to provide a NACE code(s) of their main activities. The NACE code(s) are to be specified in the State aid plan. The full list of NACE codes can be found in Annex 10.

Articles 27, 36, 38, 41, 46, and 47 state that the aid intensity may be increased by 15 percentage points for investments located in **assisted areas** fulfilling the conditions of Article 107(3)(a) of the Treaty, and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty. These assisted areas are assigned on a level lower than NUTS3 (so called LAUs) which, in practice, means that some parts of NUTS3 can have different status (a, c or unassisted) and different increased percentages. For some of these territorial units, the percentage applied will be different between 2014-2017 and 2018-2020. Therefore, it is recommended that they contact the JS to check which percentage should be used.

The scheme covering article 20 can be applied to undertakings located in the programme area only.

The framework scheme is applicable to undertakings located in 7 Member States covered by the programme including outside of the programme area territories of Germany, France and the Netherlands. Both schemes are not applicable to undertakings from other Member States (e.g. Denmark, Spain etc.)

<sup>11</sup> The firms affected are listed here: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/recovery\\_statistics.xlsx](http://ec.europa.eu/competition/state_aid/studies_reports/recovery_statistics.xlsx)

The application of GBER for downstream State aid activities is possible, but will require meeting additional conditions. Due to the programme's reporting obligations on GBER all third parties which are to receive State aid covered by GBER must be added as partners in the Application Form and bear the consequences linked thereto.

Any documentation concerning the aid granted under GBER must be kept for 10 years starting from the date when the aid was granted (i.e. at the moment that the subsidy contract was signed and not at the moment the aid was paid out).

## 4.2 Exclusion from the schemes

Both schemes shall not be applied to activities excluded from eligibility under Article 1 of GBER 2014-20. Specifically:

### Export aid

The schemes are not available to:

- Export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;
- Aid contingent on the use of domestic over imported goods.

### Sectoral coverage

Both schemes are not available to:

- The fishery and aquaculture sector as covered by Regulation (EU) 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation 104/2000<sup>12</sup> with the exception of training aid (Article 31 of GBER 2014-20), aid for research and development (Article 25 of GBER 2014-20) and innovation aid for SMEs (Article 28 of GBER 2014-20).
- The primary agricultural production sector, with the exception of training aid (Article 31 of GBER 2014-20), aid for research and development (Article 25 of GBER 2014-20), innovation aid for SMEs (Article 28 of GBER 2014-20), and compensation for environmental aid (Articles 36, 38, 41, 45, 46 and 47).
- The processing and marketing of agricultural products in the following cases:
  - Where the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned
  - Where the aid is conditional on being partly or entirely passed on to primary producers

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<sup>12</sup> OJEU L354/1 of 28 December 2013.

- Facilitate the closure of uncompetitive coalmines, as covered by Council Decision No 2010/787<sup>13</sup>.

### **Firms subject to recovery orders or in difficulty**

Both schemes explicitly exclude the payment of aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market<sup>14</sup>.

Both schemes are not available to firms in difficulty (as defined in Article 2(18) of GBER 2014-20).

## **4.3 Aid to SMEs**

### **4.3.1 Cooperation costs incurred by SMEs participating in European Territorial Cooperation projects (GBER Article 20)**

Among other requirements, the SME must meet the criterion requiring that 'an SME is not in difficulty'.

#### **4.3.1.1 Eligibility of costs**

The eligible costs under this exemption scheme will be claimed under the following budget lines:

- Staff costs, to the extent that these are linked to the cooperation project;
- Office and administrative expenditure, to the extent that it is linked to the cooperation project;
- Travel and accommodation that is directly related to the project;
- External expertise and services linked to cooperation and delivered by external consultants and service providers. These services cannot be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or routine advertising;
- Equipment that is directly related to the project and depreciation of tools and equipment used directly for the project;
- Infrastructure and construction works.

#### **4.3.1.2 Aid intensity and aid ceiling**

The maximum grant rate (known as 'maximum intensity') of eligible costs (from all public sources) will be limited to 50 % and the absolute ceiling for co-financing will be limited to €2,000,000 per undertaking per project.

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<sup>13</sup> OJEU L336/24 of 21 December 2010.

<sup>14</sup> The firms affected are listed here: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/recovery\\_statistics.xlsx](http://ec.europa.eu/competition/state_aid/studies_reports/recovery_statistics.xlsx)

## 4.4 Aid for Research and Development and Innovation<sup>15</sup>

This aid category contains a selection of GBER 2014-20 articles 25 to 29.

### 4.4.1 Aid for research and development projects

Aid for research and development projects under this scheme shall comply with GBER 2014-20, **Article 25**.

#### 4.4.1.1 Aided categories

The aided part of the research and development project shall completely fall within one or more of the following categories:

- (a) Fundamental research;
- (b) Industrial research;
- (c) Experimental development;
- (d) Feasibility studies.

#### 4.4.1.2 Eligibility of costs

The eligible costs of research and development projects shall be allocated to a specific category of research and development and shall be the following:

- (a) Personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
- (b) Costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible.
- (c) Costs for of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible.
- (d) Costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
- (e) Additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project;

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

#### 4.4.1.3 Aid intensities and aid ceilings

The aid intensity for each beneficiary shall not exceed:

- (a) 100 % of the eligible costs for fundamental research;
- (b) 50 % of the eligible costs for industrial research;
- (c) 25 % of the eligible costs for experimental development;
- (d) 50 % of the eligible costs for feasibility studies.

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

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<sup>15</sup> Communication from the Commission — Framework for State aid for research and development and innovation, 2014/C 198/1, [http://ec.europa.eu/competition/state\\_aid/modernisation/rdi\\_framework\\_en.pdf](http://ec.europa.eu/competition/state_aid/modernisation/rdi_framework_en.pdf)

- (a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
- (b) by 15 percentage points if one of the following conditions is fulfilled:
  - i. the project involves effective collaboration:
    - between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or
    - between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results;
  - ii. the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.

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

	Large Enterprise	Medium Enterprise	Small Enterprise	Effective collaboration / Wide dissemination	Ceiling
Fundamental Research	100 %	100 %	100 %		€40m
Industrial Research	50 %	60 %	70 %	+15 %	€20m
Experimental Development	25 %	35 %	45 %	+15 %	€15m
Feasibility Studies	50 %	60 %	70 %		€7.5m

#### 4.4.2 Investment aid for research infrastructures

Investment aid for research infrastructures under this scheme shall comply with GBER 2014-20, **Article 26**.

Where research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately based on consistently applied and objectively justifiable cost accounting principles.

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

Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. To avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.



#### 4.4.2.1 Eligibility of costs

The eligible costs shall be the investment costs in intangible and tangible assets.

#### 4.4.2.2 Aid intensity and aid ceiling

The aid intensity of operating aid shall not exceed 50 % of the eligible costs.

The ceiling for innovation aid is €20m per infrastructure.

#### 4.4.3 Aid for innovation clusters

Aid for innovation clusters under this scheme shall comply with GBER 2014-20, **Article 27**.

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

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

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

### Construction and upgrade of clusters

#### 4.4.3.1 Eligibility of costs

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

#### 4.4.3.2 Aid intensity

The aid intensity of investment aid for innovation clusters shall not exceed 50 % of the eligible costs. The aid intensity may be increased by 15 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

### Operating aid

#### 4.4.3.3 Eligibility of costs

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

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

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

- (b) marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;
- (c) management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.

#### **4.4.3.4 Aid intensity**

The aid intensity of operating aid shall not exceed 50 % of the total eligible costs during the period over which the aid is granted.

#### **4.4.3.5 Aid ceiling**

The ceiling for aid for innovation clusters is €7,5m per cluster.

### **4.4.4 Innovation aid for SMEs**

Innovation aid for SMEs under this scheme shall comply with GBER 2014-20, **Article 28**.

#### **4.4.4.1 Eligibility of costs**

The eligible costs shall be the following:

- (a) costs for obtaining, validating and defending patents and other intangible assets;
- (b) costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;
- (c) costs for innovation advisory and support services;

#### **4.4.4.2 Aid intensity and aid ceiling**

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

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

The ceiling for innovation aid for SMEs projects is €5m per undertaking, per project.

### **4.4.5 Aid for process and organisational innovation**

Aid for process and organisational innovation under this scheme shall comply with GBER 2014-20, **Article 29**.

Aid to large undertakings shall only be compatible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs.

#### **4.4.5.1 Eligibility of costs**

The eligible costs shall be the following:

- (a) personnel costs;
- (b) costs of instruments, equipment, buildings and land to the extent and for the period used for the project;

- (c) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions;
- (d) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project.

#### 4.4.5.2 Aid intensity and aid ceiling

The aid intensity shall not exceed 15 % of the eligible costs for large undertakings and 50 % of the eligible costs for SMEs.

The ceiling for aid for process and organisational innovation is €7.5m per undertaking, per project.

### 4.5 Training aid

This aid under this scheme shall comply with GBER 2014-20, **Article 31**.

Aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training.

#### 4.5.1.1 Eligibility of costs

The eligible costs shall be the following:

- (a) trainers' personnel costs, for the hours during which the trainers participate in the training;
- (b) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project. Accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities;
- (c) costs of advisory services linked to the training project;
- (d) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.

#### 4.5.1.2 Aid intensity and aid ceiling

The aid intensity shall not exceed 50% of the eligible costs. It may be increased, up to a maximum aid intensity of 70% of the eligible costs, as follows:

- (a) by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;
- (b) by 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small enterprises.

### 4.6 Aid for environmental protection

This aid category contains a selection of GBER 2014-20 articles 36, 38, 41, 45, 46, and 47.

#### **4.6.1 Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards**

Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards under this scheme shall comply with GBER 2014-20, **Article 36**.

The investment shall fulfil one of the following conditions:

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

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

By way of derogation, aid may be granted for:

- (a) the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Union standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date.
- (b) retrofitting of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the Union standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, they do not apply retroactively to those vehicles.

##### **4.6.1.1 Eligibility of costs**

The eligible costs shall be the extra investment costs necessary to go beyond the applicable Union standards or to increase the level of environmental protection in the absence of Union standards. They shall be determined as follows:

- (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
- (b) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.

The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

##### **4.6.1.2 Aid intensity**

The aid intensity shall not exceed 40 % of the eligible costs.

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

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

#### **4.6.2 Investment aid for energy efficiency measures**

Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards under this scheme shall comply with GBER 2014-20, **Article 38**.

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

##### **4.6.2.1 Eligibility of costs**

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

- (a) where the costs of investing in energy efficiency can be identified in the total investment cost as a separate investment, this energy efficiency-related cost shall constitute the eligible costs;
- (b) in all other cases, the costs of investing in energy efficiency are identified by reference to a similar, less energy efficient investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitutes the eligible costs.

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

##### **4.6.2.2 Aid intensity and aid ceiling**

The aid intensity shall not exceed 30 % of the eligible costs.

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

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

#### **4.6.3 Investment aid for the promotion of energy from renewable sources**

Investment aid for the promotion of energy from renewable sources under this scheme shall comply with GBER 2014-20, **Article 41**.

Investment aid for the production of biofuels shall be exempted from the notification requirement only to the extent that the aided investments are used for the production of sustainable biofuels other than food-based biofuels. However, investment aid to convert existing

food-based biofuel plants into advanced biofuel plants shall be exempted under this Article, provided that the food-based production would be reduced commensurate to the new capacity.

Aid shall not be granted for biofuels which are subject to a supply or blending obligation.

Aid shall not be granted for hydropower installations that do not comply with Directive 2000/60/EC of the European Parliament.

The investment aid shall be granted to new installations only. No aid shall be granted or paid out after the installation started operations and aid shall be independent from the output.

#### **4.6.3.1 Eligibility of costs**

The eligible costs shall be the extra investment costs necessary to promote the production of energy from renewable sources. They shall be determined as follows:

- (a) where the costs of investing in the production of energy from renewable sources can be identified in the total investment cost as a separate investment, for instance as a readily identifiable add-on component to a pre-existing facility, this renewable energy-related cost shall constitute the eligible costs;
- (b) where the costs of investing in the production of energy from renewable sources can be identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid, this difference between the costs of both investments identifies the renewable energy-related cost and constitutes the eligible costs;
- (c) for certain small installations where a less environmentally friendly investment cannot be established as plants of a limited size do not exist, the total investment costs to achieve a higher level of environmental protection shall constitute the eligible costs.

The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

#### **4.6.3.2 Aid intensity and aid ceiling**

The aid intensity shall not exceed:

- (a) 45 % of the eligible costs if the eligible costs are calculated based on point 12.3.1 (a) or point 12.3.1 (b);
- (b) 30 % of the eligible cost if the eligible costs are calculated based on point 12.3.1 (c).

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

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

Where aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid intensity may reach 100 % of the eligible costs. Such a bidding

process shall be non-discriminatory and provide for the participation of all interested undertakings. The budget related to the bidding process shall be a binding constraint in the sense that not all participants can receive aid and the aid shall be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations.

The ceiling for **Investment aid for the promotion of energy from renewable sources** projects is €15m per undertaking per investment project.

#### **4.6.4 Investment aid for remediation of contaminated sites**

Investment aid for remediation of contaminated sites under this scheme shall comply with GBER 2014-20, **Article 45**.

The investment shall lead to the repair of the environmental damage, including damage to the quality of the soil or of surface water or groundwater.

Where the legal or physical person liable for the environmental damage under the law applicable in each Member State without prejudice to the Union rules in this matter — in particular Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage as amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries, Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 and Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC is identified, that person must finance the remediation in accordance with the 'polluter pays' principle, and no State aid shall be granted. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, the person responsible for the remediation or decontamination work may receive State aid.

##### **4.6.4.1 Eligibility of costs**

The eligible costs shall be the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may be considered as eligible investment in the case of the remediation of contaminated sites.

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

##### **4.6.4.2 Aid intensity and aid ceiling**

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

The ceiling for **Investment aid for remediation of contaminated sites** projects is €20m per undertaking per investment project.

#### 4.6.5 Investment aid for energy efficient district heating and cooling

Investment aid for energy efficient district heating and cooling under this scheme shall comply with GBER 2014-20, **Article 46**.

##### 4.6.5.1 Eligibility of costs

The eligible costs for the production plant shall be the extra costs needed for the construction, expansion and refurbishment of one or more generation units to operate as an energy efficient district heating and cooling system compared to a conventional production plant. The investment shall be an integral part of the energy efficient district heating and cooling system.

The eligible costs for the distribution network shall be the investment costs.

The aid amount for the distribution network shall not exceed the difference between the eligible costs and the operating profit. The operating profit shall be deducted from the eligible costs ex ante or through a claw-back mechanism.

##### 4.6.5.2 Aid intensity and aid ceiling

The aid intensity for the production plant shall not exceed 45 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

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

The ceiling for **Investment aid for energy efficient district heating and cooling** projects is €20m per undertaking per investment project.

#### 4.6.6 Investment aid for waste recycling and re-utilisation

Investment aid for waste recycling and re-utilisation under this scheme shall comply with GBER 2014-20, **Article 47**.

The investment aid shall be granted for the recycling and re-utilisation of waste generated by other undertakings.

The recycled or re-used materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner. Aid to waste recovery operations other than recycling shall not be block exempted under this Article.

The aid shall not indirectly relieve the polluters from a burden that should be borne by them under Union law, or from a burden that should be considered a normal company cost.

The investment shall not merely increase demand for the materials to be recycled without increasing collection of those materials.

The investment shall go beyond the state of the art.



Aid for investments relating to the recycling and re-utilisation of the beneficiary's own waste shall not be exempt from the notification requirement under this Article.

#### **4.6.6.1 Eligibility of costs**

The eligible costs shall be the extra investment costs necessary to realise an investment leading to better or more efficient recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence of the aid.

#### **4.6.6.2 Aid intensity**

The aid intensity shall not exceed 35 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

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

### **5 Notification to the European Commission**

The process of applying to the European Commission can be time consuming and expensive<sup>16</sup>. As with any application, there is no guarantee that approval can be provided. No public funding can be provided until approval is given and the time taken to get approval varies between four months and twenty-four months depending upon the nature of the application. In the context of the spending deadlines set by the European Structural and Investment Funds programme, it is easy to see that notification is unlikely to be a practical approach to a State aid issue.

Notification should therefore only be used as a last resort. Given the work involved it is usually only appropriate to undertake notification on large strategic/major projects, where no alternative exemption could be used to achieve the same objectives.

### **6 Projects generating net revenue and State aid method**

The necessity to deduct net revenues depends on the moment of time when the net revenue will be generated and

#### **1. Projects generating net revenue during their implementation<sup>17</sup>**

All partners subject to rules on State aid are exempted from the application of this article and consequently do not have to report and deduct the net revenues generated.

#### **2. Projects generating net revenue after their completion only or during their implementation and after their completion<sup>18</sup>**

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<sup>16</sup> Due to these reasons Germany and Luxembourg completely exclude this method.

<sup>17</sup> According to Article 65(8) of Common Provisions Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.

Partners subject to rules on State aid which generate net revenue after their completion only or during their implementation and after their completion might be requested to report and deduct net revenues in certain cases depending on the method applied and the type of the undertaking.

- De minimis: net revenue shall not be deducted regardless of the size of the undertaking;
- State aid for SMEs with a limited maximal amount or limited maximal aid intensities: net revenues shall not be deducted;
- State aid to SME and large undertakings where individual verification of financing needs is required by the scheme or regulation: net revenues shall not be deducted<sup>19</sup>  
State aid to large undertakings without verification of financing needs: net revenues shall be deducted<sup>20</sup>.

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<sup>18</sup> According to Article 61(1-8) of Common Provisions Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.

<sup>19</sup> Individual verification of financial needs in the Interreg North West Europe Programme framework scheme is requested only when GBER Article 46 is applied (See chapter 4.6.5).

<sup>20</sup> As verification of financial needs is not requested for GBER Articles 25, 26, 27, 28, 29, 31, 36, 38, 41, 45, 47 covered by the Interreg NWE framework scheme it means in practice that large undertakings receiving state aid covered by these GBER articles and generating net revenues after the completion of the project only or during the implementation of the project and after its completion will be requested to report and deduct net revenue.

## **Annex 1**

### **State aid plan**

Please prepare the State aid plan whenever you have State aid relevant activities in the project.

#### **Part 1**

State aid project analysis

- Please specify in which work package(s) you plan to have State aid relevant activities
- Please specify which approach you want to use, de-minimis, GBER or mixed and explain why.

## Part 2

State Aid application table

Partner number	Name of the partner	Type of organization	State aid relevant activities? (yes/no)	Type of undertaking <sup>21</sup> (small/medium/large)	Undertaking in difficulty <sup>22</sup> or subject to recovery order <sup>23</sup> ? (yes/no)	Proposed approach (de-minimis / GBER article)	If <b>GBER Art. 25</b> please define the type of activities <sup>24</sup> . If <b>De Minimis</b> please specify the aids received within the 3 last fiscal years and the country providing it.	If <b>GBER</b> , put proposed maximum intensity rate <sup>25</sup> and <u>justify</u> . If <b>De Minimis</b> put the amount you are requesting from public funds.	If <b>GBER</b> specify NACE code(s) <sup>26</sup>
1.	Company	Private company	Yes	Small enterprise	No	GBER Art. 25		60 %	
2.1	University	Research organization	No		No				
3.2	City council	Public, but with economic activities	Yes	-	-	De-minimis	EUR 20 000 Germany	EUR 100 000	

<sup>21</sup> See Annexes 7a and 7b of Guidance document State aid in the North West Europe Programme

<sup>22</sup> See Annex 8 of Guidance document State aid in the North West Europe Programme

<sup>23</sup> [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/recovery\\_statistics.xlsx](http://ec.europa.eu/competition/state_aid/studies_reports/recovery_statistics.xlsx)

<sup>24</sup> Specify if the activities in the project can be described as Fundamental Research or Industrial Research or Experimental Development or Feasibility Studies. See Chapter 4.4.1. Aid for research and development projects of Guidance document State aid in the North West Europe Programme

<sup>25</sup> See Chapter 4.1 General principles of Guidance document State aid in the North West Europe Programme

<sup>26</sup> See Annex 10 of Guidance document State aid in the North West Europe Programme

**Annex 2**  
**De minimis self-declaration for project partner**

Please complete this declaration of previous State aid received under the *de minimis* rule. Using this information we will assess your eligibility to receive assistance. Please note that having received previous aid under the *de minimis* Regulation does not automatically disqualify you from receiving further *de minimis* aid from the North West Europe Programme. Please include any aid received, from national or EU sources, in this declaration.

**Declaration**

I, the undersigned, representing name of the project partner organisation and involved as project partner in the project Project Number, Project Acronym, declare that:

- the institution I represent and all other entities belonging to the same company group as my institution have not received any contribution falling under the *de minimis* Regulation during the previous three fiscal years (this being the current fiscal year and the previous two fiscal years)
- the institution I represent and all other entities belonging to the same company group as my institution have received the following contribution(s) falling under the *de minimis* Regulation during the previous three fiscal years (this being the current fiscal year and the previous two fiscal years):

Beneficiary, project name and programme	Country granting the <i>de minimis</i> aid	Amount granted, in EUR	Date of granting
		<b>Total:</b>	

I acknowledge that untruthful/false declarations, in addition to the administrative sanctions and the request for refunding unduly received contribution charged with the interests, can also be prosecuted by the penal code.

Signature

Date

*Name and function of the person signing for the beneficiary  
 (and official stamp of the project partner where applicable)*

## Annex 3

### Direct *de minimis* award letter

#### In accordance with Commission Regulation (EU) No 1407/2013

for the organization

Organisation,

participating in the project project number, acronym co-financed by North West Europe Programme – hereinafter referred to as *de minimis* recipient.

The *de minimis* recipient is granted *de minimis* aid within the meaning of Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Article 107 and 108 of the TFEU to *de minimis* aid<sup>27</sup>. In accordance with Article 3(2) of that regulation the maximum total amount of *de minimis* aid granted per Member State to a single undertaking – as defined by Article 2(2) of that regulation – shall not exceed EUR 200,000 during the current fiscal year and the previous two fiscal years. The total amount of *de minimis* aid granted per Member State to a single undertaking performing road freight transport for hire or reward shall not exceed EUR 100,000 during the current fiscal year and the previous two fiscal years.

On DD.MM.YYYY (= date of signature of original *de minimis* declaration) the *de minimis* recipient provided a *de minimis* declaration about any other *de minimis* aid received during the current fiscal year and the previous two fiscal years. Further in this declaration the *de minimis* recipient confirmed compliance with the requirements of Commission Regulation (EU) No 1407/2013.

As a result, **the *de minimis* recipient is granted *de minimis* aid** within the meaning of Commission Regulation (EU) No 1407/2013 **amounting to EUR xxx (gross grant equivalent: EUR xxx)**. The aid is granted to the *de minimis* recipient **through the subsidy contract of the project project number, acronym concluded on DD.MM.YYYY** (= date of signature of SC) between the Région Hauts-de-France – acting as the managing authority of the European territorial cooperation programme Interreg North West Europe – and the lead partner of the project.

The aid was granted by the following Member States:

- Belgium (amount)
- France (amount)
- Germany (amount)
- Ireland (amount)
- The Netherlands (amount)
- The United Kingdom (amount)

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<sup>27</sup> OJ L352/1 of 24 December 2013

This *de minimis* award letter

- shall be kept available for 10 fiscal years from the date on which the aid was granted (i.e. signature of the subsidy contract)
- shall be provided on request of the EU Commission, the Member States participating in the North West Europe Programme, the responsible auditing bodies of the EU and, within their responsibility, the auditing bodies of the participating EU Member States or other national public auditing bodies or an external auditor designated by the programme bodies, as well as the Audit Authority of the programme, the Group of Auditors of the programme and the managing authority or joint secretariat within a period of 10 working days or such longer period as may be fixed in the request.
- shall be considered for future applications for any *de minimis* aid of the *de minimis* recipient acting as a single undertaking – as defined by Article 2(2) of Commission Regulation (EU) No 1407/2013.

**For the managing authority of the European territorial cooperation programme Interreg North West Europe:**

Name and surname of the signatory .....

Function of the signatory .....

Name of the organisation .....

Signature (and stamp, if available) .....

Place and date: .....

## Annex 4

### **De minimis self-declaration for final beneficiaries**

Please complete this declaration of previous State aid received under the *de minimis* rule. Using this information we will assess your eligibility to receive assistance. Please note that having received previous aid under the *de minimis* Regulation does not automatically disqualify you from receiving further *de minimis* aid from the North West Europe Programme. Please include any aid received, from national or EU sources, in this declaration.

#### Declaration

I, the undersigned, representing name of the company and receiving aid within the framework of the project Project Number, Project Acronym, declare that:

- the institution I represent and all other entities belonging to the same company group as my institution have not received any contribution falling under the *de minimis* Regulation during the previous three fiscal years (this being the current fiscal year and the previous two fiscal years)
  
- the institution I represent and all other entities belonging to the same company group as my institution have received the following contribution(s) falling under the *de minimis* Regulation during the previous three fiscal years (this being the current fiscal year and the previous two fiscal years):

Beneficiary, project name and programme	Country granting the <i>de minimis</i> aid	Amount granted, in EUR	Date of granting
<b>Total:</b>			

I acknowledge that untruthful/false declarations, in addition to the administrative sanctions and the request for refunding unduly received contribution charged with the interests, can also be prosecuted by the penal code.

Signature

Date

*Name and function of the person signing for the beneficiary  
(and official stamp of the project partner where applicable)*



## Annex 5

### Downstream *de minimis* award letter

#### In accordance with Commission Regulation (EU) No 1407/2013

for the organization

Organisation,

participating as a final beneficiary in the project project number, acronym co-financed by North West Europe Programme – hereinafter referred to as *de minimis* recipient.

The *de minimis* recipient is granted *de minimis* aid within the meaning of Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Article 107 and 108 of the TFEU to *de minimis* aid<sup>28</sup>. In accordance with Article 3(2) of that regulation the maximum total amount of *de minimis* aid granted per Member State to a single undertaking – as defined by Article 2(2) of that regulation – shall not exceed EUR 200,000 during the current fiscal year and the previous two fiscal years. The total amount of *de minimis* aid granted per Member State to a single undertaking performing road freight transport for hire or reward shall not exceed EUR 100,000 during the current fiscal year and the previous two fiscal years.

On DD.MM.YYYY (= date of signature of original *de minimis* declaration) the *de minimis* recipient provided a *de minimis* declaration about any other *de minimis* aid received during the current fiscal year and the previous two fiscal years. Further in this declaration the *de minimis* recipient confirmed compliance with the requirements of Commission Regulation (EU) No 1407/2013.

As a result, **the *de minimis* recipient is granted *de minimis* aid** within the meaning of Commission Regulation (EU) No 1407/2013 **amounting to EUR xxx (gross grant equivalent: EUR xxx)**. The aid is granted to the *de minimis* recipient **through the contract concluded on DD.MM.YYYY** (= date of signature of contract) between the Project Partner and Organisation.

This *de minimis* award letter

- shall be kept available for 10 fiscal years from the date on which the aid was granted (i.e. signature of the subsidy contract)
- shall be provided on request of the EU Commission, the Member States participating in the North West Europe Programme, the responsible auditing bodies of the EU and, within their responsibility, the auditing bodies of the participating EU Member States or other national public auditing bodies or an external auditor designated by the programme bodies, as well as the Audit Authority of the programme, the Group of Auditors of the programme and the managing authority or joint secretariat within a period of 10 working days or such longer period as may be fixed in the request.

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<sup>28</sup> OJ L352/1 of 24 December 2013

- shall be considered for future applications for any *de minimis* aid of the *de minimis* recipient acting as a single undertaking – as defined by Article 2(2) of Commission Regulation (EU) No 1407/2013.

**For the Project Partner**

Name and surname of the signatory .....

Function of the signatory .....

Name of the organisation .....

Signature (and stamp, if available) .....

Place and date: .....

## Annex 6

### Notification of GBER State aid

Project Acronym	<i>Acronym of the project from the Application Form</i>
Beneficiary Name	<i>Name of the organization from the Application Form</i>
NACE Code (if applicable)	<i>From the State aid plan</i>
Type of organisation	<i>From the State aid plan</i>
Type of undertaking	<i>From the State aid plan</i>
Address	<i>From the Application Form</i>
NUTS3	<i>From the Application Form</i>
Aid instrument	<i>Grant</i>
Aid granting date	<i>DD/MM/YYYY of the signature of Subsidy Contract by MA</i>
Aid objective	<i>The project main objective from the Application Form</i>
Granting authority	<i>Région Nord-Pas de Calais Hauts-de-France acting as Managing Authority of the INTERREG North West Europe Programme</i>
Programme Intervention rate	
State aid scheme	
Maximum overall aid Amount awarded to the undertaking	<i>XXX €</i>
Reference number	<b>SA.40646 / SA.45348</b>

## **Annex 7 a and b (Excel)**

### **SME Definition**

#### **Article 1**

##### Enterprise

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

#### **Article 2**

Staff headcount and financial thresholds determining enterprise categories

1. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

#### **Article 3**

Types of enterprise taken into consideration in calculating staff numbers and financial amounts

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

- (a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
- (b) universities or non-profit research centres;
- (c) institutional investors, including regional development funds;
- (d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.

3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:

- (a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
- (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

(d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Union rules.

#### **Article 4**

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods.

3. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

#### **Article 5**

Staff headcount

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

#### **Article 6**

Establishing the data of an enterprise

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

## Annex 8

### Definition of the undertaking in difficulty

**Undertaking in difficulty'** means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (37) and 'share capital' includes, where relevant, any share premium.

(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.

(e) In the case of an undertaking that is not an SME, where, for the past two years:

- (1) the undertaking's book debt to equity ratio has been greater than 7,5 and
- (2) the undertaking's EBITDA interest coverage ratio has been below 1,0.

## Annex 9 - Glossary

### General definitions

'aid' means any measure fulfilling all the criteria laid down in Article 107(1) of the Treaty;

'small and medium-sized enterprises' or 'SMEs' means undertakings fulfilling the criteria laid down in Annex 7;

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

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

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

'agricultural product' means the products listed in Annex I to the Treaty, except fishery and aquaculture products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013;

'individual aid' means:

(i) ad hoc aid; and

(ii) awards of aid to individual beneficiaries on the basis of an aid scheme;

'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount;

'undertaking in difficulty' means an undertaking fulfilling the criteria specified in Annex 8

'large enterprises' means undertakings not fulfilling the criteria laid down in Annex 7;

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

'assisted areas' means areas designated in an approved regional aid map for the period 1.7.2014 - 31.12.2020 in application of Articles 107(3)(a) and (c) of the Treaty;

'date of granting of the aid' means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime;

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

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

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

'net increase in the number of employees' means a net increase in the number of employees in the establishment concerned compared with the average over a given period in time, and that any posts lost during that period must therefore be deducted and that the number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions;

'dedicated infrastructure' means infrastructure that is built for ex-ante identifiable undertaking(s)



and tailored to their needs.

'financial intermediary' means any financial institution regardless of its form and ownership, including fund-of-funds, private equity investment funds, public investment funds, banks, micro-finance institutions and guarantee societies;

'journey' means the movement of goods from the point of origin to the point of destination, including any intermediary sections or stages within or outside the Member State concerned, made using one or more means of transport;

'fair rate of return (FRR)' means the expected rate of return equivalent to a risk-adjusted discount rate which reflects the level of risk of a project and the nature and level of capital the private investors plan to invest;

'total financing' means the overall investment amount made into an eligible undertaking or project under Section 3 or under Articles 16 or 39 of this Regulation to the exclusion of entirely private investments provided on market terms and outside the scope of the relevant State aid measure;

'competitive bidding process' means a non-discriminatory bidding process that provides for the participation of a sufficient number of undertakings and where the aid is granted on the basis of either the initial bid submitted by the bidder or a clearing price. In addition, the budget or volume related to the bidding process is a binding constraint leading to a situation where not all bidders can receive aid;

'operating profit' means the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid.

### **Definitions for Aid to SMEs**

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

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

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

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

### **Definitions for Aid for research and development and innovation**

'research and knowledge-dissemination organisation' means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity also pursues economic activities the financing, the costs and the revenues of those economic activities must be accounted for separately. Undertakings that can exert a decisive influence

upon such an entity, in the quality of, for example, shareholders or members, may not enjoy preferential access to the results generated by it;

'fundamental research' means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view;

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

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

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements;

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

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

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

'effective collaboration' means collaboration between at least two independent parties to exchange knowledge or technology, or to achieve a common objective based on the division of labour where the parties jointly define the scope of the collaborative project, contribute to its implementation and share its risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of its financial risks. Contract research and provision of research services are not considered forms of collaboration.

'research infrastructure' means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers scientific equipment or sets of instruments, knowledge-based resources such as collections, archives or structured scientific information, enabling information and communication technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research. Such infrastructures may be 'single-sited' or

'distributed' (an organised network of resources) in accordance with Article 2(a) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) [\(1\)](#);

'innovation clusters' means structures or organised groups of independent parties (such as innovative start-ups, small, medium and large enterprises, as well as research and knowledge dissemination organisations, non-for-profit organisations and other related economic actors) designed to stimulate innovative activity through promotion, sharing of facilities and exchange of knowledge and expertise and by contributing effectively to knowledge transfer, networking, information dissemination and collaboration among the undertakings and other organisations in the cluster;

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

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

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

'organisational innovation' means the implementation of a new organisational method in an undertaking's business practices, workplace organisation or external relations, excluding changes that are based on organisational methods already in use in the undertaking, changes in management strategy, mergers and acquisitions, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products;

'process innovation' means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment or software), excluding minor changes or improvements, increases in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products;

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

### **Definitions applying to aid for environmental protection**

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

'Union standard' means:

(a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings; or

(b) the obligation under Directive 2010/75/EU of the European Parliament and of the Council [\(2\)](#) to use the best available techniques (BAT) and ensure that emission levels of pollutants are not higher than they would be when applying BAT; for the cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those levels will be applicable for the purpose of this Regulation; where those levels are expressed as a range, the limit where the BAT is first achieved will be applicable;

'energy efficiency' means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy-efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption; 'energy efficiency project' means an investment project that increases the energy efficiency of a building;

'energy efficiency fund (EEF)' means a specialised investment vehicle set up for the purpose of investing in energy efficiency projects aimed at improving the energy efficiency of buildings in both the domestic and non-domestic sectors. EEFs are managed by an energy efficiency fund manager;

'energy efficiency fund manager' means a professional management company with a legal personality, selecting and making investments in eligible energy efficiency projects;

'high-efficiency cogeneration' means cogeneration which satisfies the definition of high efficiency cogeneration as set out in Article 2(34) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC [\(3\)](#);

'cogeneration' or combined heat and power (CHP) means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;

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

'renewable energy sources' means the following renewable non-fossil energy sources: wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

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

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

'food based biofuel' means a biofuel produced from cereal and other starch rich crops, sugars and oil crops as defined in the Commission's Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources [\(4\)](#);

'new and innovative technology' means a new and unproven technology compared to the state of the art in the industry, which carries a risk of technological or industrial failure and is not an optimisation or scaling up of an existing technology;

'balancing responsibilities' means responsibility for imbalances (deviations between generation, consumption and commercial transactions) of a market participant or its chosen representative, referred to as the 'Balance Responsible Party', within a given period of time, referred to as the 'Imbalance Settlement Period';

'standard balancing responsibilities' means non-discriminatory balancing responsibilities across technologies which do not exempt any generator from those responsibilities;

'biomass' means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as biogases and the biodegradable fraction of industrial and municipal waste;

'total levelized costs of producing energy' is a calculation of the cost of generating electricity at the point of connection to a load or electricity grid. It includes the initial capital, discount rate, as well as the costs of continuous operation, fuel, and maintenance;

'environmental tax' means a tax with a specific tax base that has a clear negative effect on the environment or which seeks to tax certain activities, goods or services so that the environmental

costs may be included in their price and/or so that producers and consumers are oriented towards activities which better respect the environment;

'Union minimum tax level' means the minimum level of taxation provided for in the Union legislation; for energy products and electricity it means the minimum level of taxation laid down in Annex I to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [\(5\)](#);

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

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

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

'energy efficient district heating and cooling' means a district heating and cooling system which satisfies the definition of efficient district heating and cooling system set out in Article 2(41) and (42) of Directive 2012/27/EU. The definition includes the heating/cooling production plants and the network (including related facilities) necessary to distribute the heat/cooling from the production units to the customer premises;

'polluter' means someone who directly or indirectly damages the environment or who creates conditions leading to such damage.

're-use' means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;

'preparing for re-use' means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;

'recycling' means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;

'state of the art' means a process in which the re-use of a waste product to manufacture an end product is economically profitable normal practice. Where appropriate, the concept of state of the art must be interpreted from a Union technological and internal market perspective;

'energy infrastructure' means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries and falling under the following categories:

(a)concerning electricity:

(i)infrastructure for transmission, as defined in Article 2(3) by Directive 2009/72/EC of 13 July 2009 concerning common rules for internal market in electricity [\(6\)](#);

(ii) infrastructure for distribution, as defined in Article 2(5) by Directive 2009/72/EC;

(iii)electricity storage, defined as facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;

(iv)any equipment or installation essential for the systems defined in points (i) to (iii) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations; and

(v)smart grids, defined as any equipment, line, cable or installation, both at transmission and low and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of

electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;

(b)concerning gas:

- (i)transmission and distribution pipelines for the transport of natural gas and bio gas that form part of a network, excluding high-pressure pipelines used for upstream distribution of natural gas;
- (ii)underground storage facilities connected to the high-pressure gas pipelines mentioned in point (i);
- (iii)reception, storage and regasification or decompression facilities for liquefied natural gas ('LNG') or compressed natural gas ('CNG'); and
- (iv)any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;

(c)concerning oil:

- (i) pipelines used to transport crude oil;
- (ii)pumping stations and storage facilities necessary for the operation of crude oil pipelines; and
- (iii)any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;

(d)concerning CO<sub>2</sub>: networks of pipelines, including associated booster stations, for the transport of CO<sub>2</sub> to storage sites, with the aim to inject the CO<sub>2</sub> in suitable underground geological formations for permanent storage;

'internal energy market legislation' includes Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas [\(7\)](#), Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators [\(8\)](#); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges [\(9\)](#) and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks [\(10\)](#) or any subsequent legislation replacing these acts in full or in part;

**Annex 10 - Excel**

**NACE codes**