

Environmental Aid Scheme

COMMISSION REGULATION (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 in Official Journal No57, 26th June 2014 (“the Regulation”) Irish Industrial Development Agencies, Environmental Aid Scheme 2023-2026 effective 1st July 2023 to 31st December 2026.

General Block Exemption Regulation (“the Regulation”)

1. Objective of Scheme

The objective of this scheme is to incentivise and accelerate investment in initiatives that will encourage undertakings to comply with new Union standards not yet in force for environmental protection; to improve energy efficiency; to promote the uptake of energy from renewable sources and to encourage the carrying out of environmental studies.

2. Legal Basis and Rules

The legal basis is the enabling legislation of Enterprise Ireland, IDA Ireland and Údarás na Gaeltachta (“the development agencies”)

IDA Ireland/Enterprise Ireland: Industrial Development Act 1986-2019 as amended.

Údarás Na Gaeltachta: Údarás na Gaeltachta Acts 1979 – 2010 and Gaeltacht Act 2012 (as may be amended from time to time).

The State Aid basis is:

The operation of this scheme is subject to Articles 36, 36a, 36b, 38, 38a, 41, 42, 43, 45, 46, 47, 48 and 49 of Section 7 of the COMMISSION REGULATION (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 in Official Journal No57, 26th June 2014 (“the Regulation”)

3. Budget

The average annual budget of this Scheme shall not exceed EUR 150 million.

4. Who can apply?

Applicants will be eligible to apply for environmental aid once the project concerned meets the criteria set out in the enabling legislation of the development agencies. The right to apply does not impose any obligation on the State to provide funding to an applicant.

5. Incentive Effect

5.1 This Scheme shall apply only to aid which has an incentive effect.

5.2 Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the relevant development agency before work on the project or activity starts. The application for the aid shall contain at least the following information:

(a) Undertaking’s name and size

- (b) Description of the project including its start and end dates
- (c) Location of project
- (d) List of eligible costs
- (e) type of aid
- (f) aid amount.

5.3 If work begins before the applicant has submitted a written application to the relevant development agency the whole project will be ineligible for aid. Start of work means the earlier of either the start of construction works relating to the investment or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible.

6. Scope of Scheme

6.1 The scheme shall apply to all sectors and undertakings irrespective of the size of the undertaking throughout Ireland.

6.2 This Scheme shall not apply to the following activities:-

- (a) Aid granted in 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) 1184/2006 and (EC) 1224/2009 and repealing council regulation (EC) 104/2000.
- (b) Aid for 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; or
 - ii. where the aid is conditional on being partly or entirely passed on to primary producers;
- (c) Aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision No 2010/787;

Where an undertaking is active in the excluded sectors as referred to in point (a) or (b) and also in sectors which fall within the scope of this Scheme, this Scheme applies only to aid granted in respect of the latter sectors or activities. Enterprise Agencies must ensure by appropriate means, such as separation of activities or distinction of costs that the activities in the excluded sectors do not benefit from the aid granted in accordance with this Scheme.

6.3 The following aid is not permitted under the scheme:-

- (a) Aid to export related activities towards third countries or Ireland, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to the other current expenditure linked to export activity;
- (b) Aid contingent upon the use of domestic over imported goods;
- (c) Operating aid;
- (d) Ad hoc aid;

- (e) Aid subject to conditions that the beneficiary establish its headquarters in Ireland or to be predominantly established in Ireland.
- (f) Aid measures where the grant of aid is subject to the beneficiary's use of nationally produced goods or national services.
- (g) Aid exceeding the threshold amounts for environmental aid as set out in the Regulation.
- (h) Aid other than environmental aid.

6.4 The following beneficiaries are ineligible for aid under the scheme:

- (a) A beneficiary who is subject to an outstanding recovery order following a previous Commission decision declaring the aid illegal and incompatible with the internal market.
- (b) A firm in difficulty as defined by Article 2(18) of the Regulation.

7. Categories of environmental aid

Investment aid can be granted to undertakings for the below categories of Environmental Aid and subject to the conditions laid out in the relevant Articles of Regulation:

- (a) Investment Aid for Environmental protection, including decarbonisation (Article 36)
- (b) Investment aid for recharging or refuelling infrastructure (Article 36a)
- (c) Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles (Article 36b)
- (d) Investment aid for energy efficiency measures other than in buildings (Article 38) and Investment aid for energy efficiency measures in buildings (Article 38a)
- (e) Investment aid for the promotion of energy from renewable sources of renewable hydrogen and of high-efficiency cogeneration (Article 41)
- (f) Operating aid for the promotion of electricity from renewable sources (Article 42)
- (g) Operating aid for the promotion of energy from renewable sources and of renewable hydrogen in small projects and renewable energy communities (Article 43)
- (h) Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation (Article 45), Investment aid for energy efficient district heating and/or cooling (Article 46), Investment aid for resource efficiency and for supporting the transition towards a circular economy (Article 47).
- (i) Investment aid for energy infrastructure (Article 48), aid for studies and consultancy services on environmental protection and energy matters (Article 49).

8 Eligible projects

8.1 Investment aid for environmental protection (Article 36), including aid for the reduction and removal of greenhouse gas emissions, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

- 1a. This Article shall not apply to measures for which more specific rules are laid down in Articles 36a, 36b and 38 to 48. This Article shall also not apply to investments in equipment, machinery and industrial production facilities using fossil fuels, including those using natural gas. This is without prejudice to the possibility to grant aid for the installation of add-on components improving the level of environmental protection of existing equipment, machinery and industrial production facilities, in which case the investment shall result neither in the expansion of the production capacity nor higher consumption of fossil fuels.
- 1b. This Article shall also apply to investments in equipment and machinery using, and infrastructure transporting, hydrogen to the extent that the hydrogen used or transported qualifies as renewable hydrogen. It shall also apply to investments in equipment and machinery using hydrogen-derived fuels the energy content of which is derived from renewable sources other than biomass and that have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.

This Article shall also apply to aid for investments in installations, equipment and machinery producing or using, and dedicated infrastructure referred to in Article 2, point (130), last sentence, transporting hydrogen produced from electricity and which does not qualify as renewable hydrogen, to the extent that it can be demonstrated that the electricity-based hydrogen produced, used or transported achieves life-cycle greenhouse gas emissions savings of at least 70 % relative to a fossil fuel comparator of 94g CO₂eq/MJ. To determine the life-cycle greenhouse gas emissions savings under this subparagraph, the greenhouse gas emissions linked to the production of electricity used to produce hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid.

In the cases referred to in the first and second subparagraphs, only hydrogen fulfilling the conditions set out in those subparagraphs shall be used, transported or – where relevant – produced throughout the lifetime of the investment. The Member State shall obtain a commitment to that effect.

2. The investment shall fulfil one of the following conditions:
 - (a) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary, beyond Union standards in force, irrespective of the presence of mandatory national standards that are more stringent than the Union standards; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130), last sentence, for hydrogen within the meaning of paragraph 1b, waste heat or CO₂ or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO₂, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain; or
 - (b) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary in the absence of Union standards; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130), last sentence, for hydrogen within the meaning of paragraph 1b, waste heat or CO₂ or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO₂, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain; or
 - (c) it shall enable the implementation of a project leading to an increase in the environmental protection of the activities of the beneficiary to comply with Union standards that have been

adopted but are not yet in force; for projects linked to or involving dedicated infrastructure referred to in Article 2, point (130), last sentence, for hydrogen within the meaning of paragraph 1b, waste heat or CO₂ or including a connection to energy infrastructure for hydrogen within the meaning of paragraph 1b, waste heat or CO₂, the increase in the environmental protection may also result from the activities of another entity involved in the infrastructure chain.

- 2a. Investments in CO₂ capture and transport shall fulfil the following cumulative conditions:
 - (a) the CO₂ capture and/or transport, including individual elements of the CCS or CCU chain, shall be integrated into a complete CCS and/or CCU chain;
 - (b) the net present value ('NPV') of the investment project over its lifetime shall be negative. For the purpose of calculating the project's NPV, the avoided costs of CO₂ emissions shall be taken into account;
 - (c) the eligible costs shall be exclusively the additional investment costs stemming from capturing the CO₂ from a CO₂-emitting installation (industrial installation or power plant) or directly from ambient air as well as from buffer storage and transportation of captured CO₂ emissions.
- 2b. When the aid aims at reducing or avoiding direct emissions, the aid must not merely displace the emissions concerned from one sector to another and must overall reduce the targeted emissions; in particular, when the aid aims at reducing greenhouse gas emissions, the aid must not merely displace these emissions from one sector to another and must reduce them overall.
3. Aid shall not be granted where investments are undertaken to ensure that undertakings merely comply with the Union standards in force. Aid enabling undertakings to comply with Union standards that have been adopted but not yet in force may be granted under this Article provided that the investment for which the aid is granted is implemented and finalised at least 18 months before the date of entry into force of the standard concerned.
4. The eligible costs shall be the extra investment costs determined by comparing the costs of the investment to those of a counterfactual scenario that would occur in the absence of the aid, as follows:
 - (a) where the counterfactual scenario consists in carrying out a less environmentally-friendly investment that corresponds to normal commercial practice in the sector or for the activity concerned, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the costs of the less environmentally-friendly investment;
 - (b) where the counterfactual scenario consists in carrying out the same investment at a later point in time, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the costs of the later investment, discounted to the point in time when the aided investment would be undertaken;
 - (c) where the counterfactual scenario consists in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the investments in the maintenance, repair and modernisation of the existing installations and equipment, discounted to the point in time when the aided investment would be undertaken;
 - (d) in the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in Net Present Value between the leasing of equipment for which State aid is granted and the leasing of the less environmentally-friendly equipment that would be leased in the absence of the aid; the leasing costs shall not include costs relating to the operation of

the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract.

In all situations listed in the first subparagraph, points (a) to (d), the counterfactual scenario shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual scenario shall be credible in the light of legal requirements, market conditions and incentives generated by the EU ETS system.

Where the investment for which State aid is granted consists in the installation of an add-on component to an already existing facility, for which there is no less environmentally-friendly counterfactual investment, the eligible costs shall be the total investment costs.

Where the investment for which State aid is granted consists in the construction of dedicated infrastructure referred to in Article 2, point (130), last sentence, for hydrogen within the meaning of paragraph 1b, waste heat or CO₂, that is necessary to enable the increase in the level of environmental protection as referred to in paragraphs 2 and 2a, the eligible costs shall be the total investment costs. Costs for the construction or upgrade of storage facilities, with the exception of storage facilities for renewable hydrogen and hydrogen covered by paragraph 1b, second subparagraph, shall not be eligible.

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

5. The aid intensity shall not exceed 40 % of the eligible costs. Where the investment, with the exception of those which rely on the use of biomass, results in a 100 % reduction of the direct greenhouse gas emissions, the aid intensity may reach 50 %.
6. In case of investments relating to CCS and/or CCU, the aid intensity shall not exceed 30 % of the eligible costs.
7. 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.
8. 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.
9. The aid intensity may reach 100 % of the investment costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):
 - (a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition;
 - (b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;
 - (c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;

- (d) at least 70 % of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure, for example the aid requested per unit of environmental protection to be delivered.
10. Alternatively, to paragraphs 4 to 9, the aid amount shall not exceed the difference between the investment costs directly linked to the achievement of a higher level of environmental protection and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections and verified ex post through a claw-back mechanism.
11. By way of derogation from paragraph 4, first subparagraph, points (a) to (d), and paragraphs 9 and 10, the eligible costs may be determined without the identification of the counterfactual scenario and in the absence of a competitive bidding process. In that case, the eligible costs shall be the investment costs directly linked to the achievement of a higher level of environmental protection and the applicable aid intensities and bonuses set out in paragraphs 5 to 8 are reduced by 50 %.

8.2 Investment aid for recharging or refuelling infrastructure (Article 36a)

1. Investment aid for recharging or refuelling infrastructure shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. This Article shall only cover aid granted for recharging or refuelling infrastructures that supply vehicles, mobile terminal equipment or mobile ground handling equipment with electricity or hydrogen. For aided refuelling infrastructure supplying hydrogen, the Member State shall obtain from the beneficiary a commitment that by 31 December 2035 at the latest, the refuelling infrastructure will solely supply renewable hydrogen. This Article does not apply to aid for investments relating to recharging and refuelling infrastructure in ports.
3. The eligible costs shall be the costs of the construction, installation, upgrade or extension of recharging or refuelling infrastructure. Those costs may include the costs of the recharging or refuelling infrastructure itself and related technical equipment, the installation of or upgrades to electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, as well as civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.

The eligible costs may also cover the investment costs of on-site production of renewable electricity or renewable hydrogen, and the investment costs of storage units for storing renewable electricity or hydrogen. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.

4. Aid under this Article shall be granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):
 - (a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition;

- (b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;
 - (c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;
 - (d) at least 70 % of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure for example aid requested per recharging or refuelling point.
5. Where the aid is granted in a competitive bidding process complying with the conditions of paragraph 4, the aid intensity may reach up to 100 % of the eligible costs.
 6. By way of derogation from paragraph 4, aid may be granted in the absence of a competitive bidding process when the aid is granted based on an aid scheme. In this case, the aid intensity shall not exceed 20 % of the eligible costs. The aid intensity may be increased by 20 percentage points for medium-sized enterprises and by 30 percentage points for small enterprises. The aid intensity may also be increased by 15 percentage points for investments located in assisted areas designated in an approved regional aid map in force at the time of provision of the aid in application of in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas designated in an approved regional aid map in force at the time of provision of the aid in application of Article 107(3), point (c), of the Treaty.
 7. The aid granted to any one undertaking shall not exceed 40 % of the total budget of the scheme concerned.
 8. Where the recharging or refuelling infrastructure is open for access by users other than the aid beneficiary or beneficiaries, aid shall only be granted for the construction, installation, upgrade or extension of recharging or refuelling infrastructure accessible to the public and providing non-discriminatory access to users, including in relation to tariffs, authentication and payment methods and other terms and conditions of use. The fees charged to users other than the aid beneficiary or beneficiaries for using the recharging or refuelling infrastructure shall correspond to market prices.
 9. Operators of recharging or refuelling infrastructure that offer or allow contract-based payments on their infrastructure shall not discriminate between mobility service providers, for example by applying preferential access conditions, or through price differentiation without an objective justification.
 10. The necessity of aid to invest in recharging or refuelling infrastructure of the same category as the one to be supported with aid (for example, for recharging infrastructure: normal or high power) shall be established through an ex ante open public consultation or an independent market study, which are no older than 1 year at the moment of the entry into force of the aid measure. In particular, it shall be established that no such investment is likely to take place on commercial terms within 3 years from the entry into force of the aid measure.

The obligation to conduct an ex ante open public consultation or an independent market study laid down in the first subparagraph shall not apply to aid for the construction, installation, upgrade or extension of recharging or refuelling infrastructure that is not accessible to the public.

11. By way of derogation from paragraph 10, the necessity of aid for recharging or refuelling infrastructure for road vehicles shall be presumed where vehicles powered exclusively by electricity (for recharging infrastructures) or vehicles powered at least partially by hydrogen (for refuelling infrastructures) represent respectively less than 3 % of the total number of vehicles of the same category registered in the Member State concerned. For the purpose of this paragraph, passenger cars and light-duty commercial vehicles shall be considered as being part of the same category of vehicles.
12. Any concession or other entrustment to a third party to operate the supported recharging or refuelling infrastructure shall be assigned on a competitive, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.
13. Where aid is granted for the deployment of new recharging infrastructure that allows for a transfer of electricity with a power output of less than or equal to 22 kW, the infrastructure must be capable of supporting smart recharging functionalities.

8.3 Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles (Article 36b)

1.

Investment aid for the acquisition of clean vehicles or zero-emission vehicles for road, railway, inland waterway and maritime transport and for the retrofitting of vehicles other than aircraft to qualify as clean vehicles or as zero-emission vehicles shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2.

Aid shall be granted for the purchase or the leasing for a duration of at least 12 months of clean vehicles powered at least partially by electricity or by hydrogen or zero-emission vehicles and for the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles.

3.

The eligible costs shall be the following:

(a)

for investments consisting in the purchase of clean vehicles or zero-emission vehicles, the extra costs of purchasing the clean vehicle or the zero-emission vehicle. Those shall be calculated as the difference between the investment costs of purchasing the clean vehicle or the zero-emission vehicle and the investment costs of purchasing a vehicle of the same category that complies with applicable Union standards already in force and would have been acquired without the aid;

(b)

for investments consisting in the leasing of clean vehicles or zero-emission vehicles, the extra costs of leasing the clean vehicle or the zero-emission vehicle. Those shall be calculated as the difference between the net present value of leasing the clean vehicle or the zero-emission vehicle and the net present value of leasing a vehicle of the same category that complies with applicable Union standards already in force and would have been leased without the aid. For the purposes of determining the eligible costs, the operating costs linked to the operation of the vehicle, including energy costs, insurance costs and maintenance costs, shall not be taken into account, irrespective of whether they are included in the leasing contract;

(c)

for investments consisting in the retrofitting of vehicles allowing them to qualify as clean vehicles or zero-emission vehicles, the costs of the investment in the retrofitting.

4.

Aid under this Article shall be granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a)

the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition;

(b)

during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c)

ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;

(d)

at least 70 % of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure for example aid requested per clean or zero-emission vehicle.

5.

Where the aid is granted in a competitive bidding process complying with the conditions of paragraph 4, the aid intensity shall not exceed:

(a)

100 % of the eligible costs for the purchase or the leasing of zero-emission vehicles or the retrofitting of vehicles allowing them to qualify as zero-emission vehicles;

(b)

80 % of the eligible costs for the purchase or the leasing of clean vehicles, or of the retrofitting of vehicles allowing them to qualify as clean vehicles.

6.

By way of derogation from paragraph 4, aid may be granted outside of a competitive bidding process when the aid is granted based on an aid scheme.

In those cases, the aid intensity shall not exceed 20 % of the eligible cost. The aid intensity may be increased by 10 percentage points for zero-emission vehicles and by 20 percentage points for medium-sized enterprises or by 30 percentage points for small enterprises.

7.

By derogation from paragraph 4, aid may also be granted outside of a competitive bidding process when the aid is granted for undertakings that have been awarded a public service contract for the provision of public passenger transport services by land, rail or water following an open, transparent and non-discriminatory public tender only in relation to the acquisition of clean vehicles or zero-

emission vehicles used for the provision of the public passenger transport services subject to the public service contract.

In this case, the aid intensity shall not exceed 40 % of the eligible cost. The aid intensity may be increased by 10 percentage points for zero-emission vehicles.

8.4 Investment aid enabling undertakings to improve energy efficiency other than in buildings (Article 38) shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalised at least 18 months before the standard enters into force.

2a. This Article shall not apply to aid for cogeneration and aid for district heating and/or cooling.

2b. Aid for the installation of energy equipment fired by fossil fuels, including natural gas, shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

3. The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined by comparing the costs of the investment to those of the counterfactual scenario that would occur in the absence of the aid, as follows:

(a)

where the counterfactual scenario consists in carrying out a less energy-efficient investment that corresponds to normal commercial practice in the sector or for the activity concerned, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the costs of the less energy-efficient investment;

(b)

where the counterfactual scenario consists in carrying out the same investment at a later point in time, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the costs of the later investment, discounted to the point in time when the aided investment would be undertaken;

(c)

where the counterfactual scenario consists in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment for which State aid is granted and the Net Present Value of the investment in the maintenance, repair and modernisation of the existing installation and equipment, discounted to the point in time when the aided investment would be undertaken;

(d)

In the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in Net Present Value between the leasing of the equipment for which State aid is granted and the leasing of the less energy-efficient equipment that would be leased in the absence of aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs,

insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract.

In all situations listed in the first subparagraph, the counterfactual shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual shall be credible in the light of legal requirements, market conditions and incentives generated by the EU ETS system.

Where the investment consists in a clearly identifiable investment solely aimed at improving energy efficiency, for which there is no less energy efficient counterfactual investment, the eligible costs shall be the total investment costs.

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

4.

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

5.

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.

6.

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.

7.

The aid intensity may reach 100 % of the total investment costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a)

the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition;

(b)

during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c)

ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded;

(d)

at least 70 % of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure, for example aid requested per unit of

energy saved or of energy efficiency gained. Those criteria shall not account for less than 70 % of the weighting of all the selection criteria.

8. By way of derogation from paragraph 3, points (a) to (d) and paragraph 7, the eligible costs may be determined without the identification of the counterfactual scenario and in the absence of a competitive bidding process. In that case, the eligible costs shall be the total investment costs directly linked to the achievement of a higher level of energy efficiency and the applicable aid intensities and bonuses set out in paragraphs 4, 5 and 6 are reduced by 50 %.

8.5 Investment aid for energy efficiency measures in buildings (Article 38a)

1.

Investment aid enabling undertakings to achieve energy efficiency in buildings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2.

Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force.

3.

Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force. Where the relevant Union standards are minimum energy performance standards, the aid must be granted before the standards become mandatory for the undertaking concerned. In that case, the Member State must ensure that beneficiaries provide a precise renovation plan and timetable demonstrating that the aided renovation is at least sufficient to ensure compliance with the minimum energy performance standards. Where the relevant Union standards are different from minimum energy performance standards, the investment must be implemented and finalised at least 18 months before the Union standard enters into force.

4.

This Article shall not apply to aid for cogeneration and aid for district heating and/or cooling.

5.

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

6.

The aid shall induce an improvement in the energy performance of the building measured in primary energy of at least: (i) 20 % compared to the situation prior to the investment in the case of renovation of existing buildings, or (ii) 10 % compared to the situation prior to the investment in the case of renovation measures concerning the installation or replacement of just one type of building elements as defined in Article 2(9) of Directive 2010/31/EU and such targeted renovation measures do not represent more than 30 % of the part of the scheme's budget dedicated to energy efficiency measures, or (iii) 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures transposing Directive 2010/31/EU in the case of new buildings. The initial primary energy demand and the estimated improvement shall be established by reference to an Energy Performance Certificate as defined in Article 2(12) of Directive 2010/31/EU.

7.

The aid granted for the improvement of the energy efficiency of the building may be combined with aid for any or all of the following measures:

(a)

the installation of integrated on-site equipment generating electricity, heating or cooling from renewable energy sources, including but not limited to photovoltaic panels and heat pumps;

(b)

the installation of equipment for the storage of the energy generated by the on-site renewable energy installations. The storage equipment shall absorb at least 75 % of its energy from a directly connected renewable energy generation installation, on an annual basis;

(c)

the connection to an energy efficient district heating and/or cooling system and related equipment;

(d)

the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the parking facilities are located either inside the building or are physically adjacent to the building;

(e)

the installation of equipment for the digitalisation of the building in particular to increase its smart-readiness, including passive in-house wiring or structured cabling for data networks and the ancillary part of the broadband infrastructure on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property;

(f)

investments in green roofs and equipment for the retention and use of rain water.

In case of any such combined works, as set out in points (a) to (f), the entire investment cost of the various installations and equipment shall constitute the eligible costs. The costs not directly linked to the achievement of a higher level of energy or environmental performance shall not be eligible.

8.

The aid may be granted either to the building owner(s) or the tenant(s), depending on who is commissioning the energy efficiency measure.

9.

Aid may also be granted for the improvement of the energy efficiency of the heating or cooling equipment inside the building.

10.

Aid for the installation of energy equipment fired by fossil fuels, including natural gas, shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

11.

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

12.

By way of derogation from paragraph 11, where the investment consists in the installation or replacement of just one type of building element as defined in Article 2(9) of Directive 2010/31/EU, the aid intensity shall not exceed 25 %.

13.

By way of derogation from paragraphs 11 and 12, where aid for investments in buildings undertaken to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force, the aid intensity must not exceed 15 % of the eligible costs where the investment consists in the installation or replacement of just one type of building element as defined in Article 2(9) of Directive 2010/31/EU and 20 % in all other cases.

14.

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.

15.

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

16.

The aid intensity may be increased by 15 percentage points for aid granted to improve the energy efficiency of existing buildings, where the aid induces an improvement in the energy performance of the building measured in primary energy of at least 40 % compared to the situation prior to the investment. This increase in aid intensity does not apply where the investment does not improve the energy performance of the building beyond the level imposed by minimum energy performance standards qualifying as Union standards entering into force within less than 18 months from the moment the investment is implemented and finalised.

8.6 Investment aid for the promotion of energy from renewable sources, of renewable hydrogen and of high-efficiency cogeneration (Article 41)

1.

Investment aid for the promotion of energy from renewable energy sources, of renewable hydrogen and of high-efficiency cogeneration, with the exception of electricity produced from renewable hydrogen, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

1a.

Investment aid for electricity storage projects under this Article shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that it is granted to combined renewable and storage projects (behind-the-meter), where both elements are components of a single investment or where storage is connected to an existing renewable generation installation. The storage component shall absorb at least 75 % of its energy from directly connected renewable energy generation installation, on an annual basis. All investment components (generation and storage) are considered to constitute a single integrated project for verification of

compliance with the thresholds set out in Article 4. The same rules shall apply to thermal storage directly connected to a renewable energy production installation.

2.

Investment aid for the production and storage of biofuels, bioliquids, biogas (including biomethane) and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Annex IX to that Directive. The storage component shall obtain at least 75 % of its fuel content from directly connected biofuels, bioliquids, biogas (including biomethane) and biomass fuels production installations, on an annual basis. All investment components (production and storage) are considered to constitute a single integrated project for verification of compliance with the thresholds set out in Article 4 of this Regulation.

3.

Investment aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable hydrogen. For renewable hydrogen projects consisting of an electrolyser and one or more renewable generation units behind a single grid connection point, the capacity of the electrolyser shall not exceed the combined capacity of the renewable generation units. The investment aid may cover dedicated infrastructure for the transmission or distribution of renewable hydrogen, as well as storage facilities for renewable hydrogen.

4.

Investment aid for high-efficiency cogeneration units shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that they provide overall primary energy savings compared to separate production of heat and electricity as provided for by Directive 2012/27/EU or any subsequent legislation replacing this act in full or in part. Investment aid for electricity and thermal storage projects directly connected to high-efficiency cogeneration based on renewable energy sources shall be exempted from the notification requirement of Article 108(3) of the Treaty under the conditions laid down in paragraph 1a of this Article.

4a.

Investment aid for high-efficiency cogeneration shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it is not for fossil fuel fired cogeneration installations, with the exception of natural gas where compliance with the 2030 and 2050 climate targets is ensured in accordance with section 4.30 of Annex 1 to Commission Delegated Regulation (EU) 2021/2139 (62).

5.

The investment aid shall be granted in respect of newly installed or refurbished capacities. The aid amount shall be independent from the output.

6.

The eligible costs shall be the total investment cost.

7.

The aid intensity shall not exceed:

(a)

45 % of the eligible costs for investments in the production of renewable energy sources, including heat pumps compliant with Annex VII to Directive 2018/2001, renewable hydrogen and high-efficiency cogeneration based on renewable energy sources;

(b)

30 % of the eligible costs for any other investment covered by this Article.

8.

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.

No point 9

10.

The aid intensity may reach 100 % of the eligible costs where aid is granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a)

the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition;

(b)

during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c)

ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be excluded;

(d)

at least 70 % of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid per unit of energy capacity from renewable sources or high efficiency-cogeneration.

8.7 Operating aid for the promotion of electricity from renewable sources (Article 42)

1. Operating aid for the promotion of electricity from renewable energy sources, with the exception of electricity produced from renewable hydrogen, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall be granted in a competitive bidding process, which fulfils all of the following conditions in addition to those laid down in Article 2, point (38):

(a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least 6 weeks in advance of the deadline for submitting applications, to enable effective competition;

(b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume;

(c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) shall be excluded;

at least 70 % of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid per unit of electricity output or capacity from renewable sources.

The bidding process shall be open to all generators producing electricity from renewable energy sources on a non-discriminatory basis.

3. The bidding process can be limited to specific technologies where:

(a) a measure aims specifically to support demonstration projects;

(b) a measure aims to address not only decarbonisation but also air quality or other pollution;

(c) a Member State identifies reasons to expect that eligible sectors or innovative technologies have the potential to make an important and cost-effective contribution to environmental protection and deep decarbonisation in the longer term;

(d) a measure is required to achieve diversification necessary to avoid exacerbating issues related to network stability;

(e) a more selective approach can be expected to lead to lower costs of achieving environmental protection (for example through reduced system integration costs as a result of diversification, including between renewables, which could also include demand response and/or storage), and/or result in less distortion of competition.

Member States shall carry out a detailed assessment of the applicability of such conditions and report it to the Commission according to the modalities described in Article 11(1), point (a).

4. Where the bidding process is limited to one or more innovative technologies, the aid granted to these technologies shall not exceed 5 % of the planned new electricity capacity from renewable energy sources per year in total.

5. Aid shall be granted as a premium in addition to the market price or in the form of a contract for difference whereby the generators sell their electricity directly in the market.

6. Aid beneficiaries shall sell their electricity directly in the market and be subject to standard balancing responsibilities. Beneficiaries may outsource balancing responsibilities to other undertakings on their behalf, such as aggregators. Furthermore, aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative.

Small-scale renewable electricity installations may benefit from aid in the form of direct price support that covers the full costs of operation and from an exemption from the requirement to sell the electricity produced on the market, in accordance with Article 4(3) of Directive (EU) 2018/2001.

Installations will be considered as small-scale for the purposes of this paragraph if their capacity is below the applicable threshold under Article 5(2), point (b), or Article 5(4) of Regulation (EU) 2019/943.

Aid shall only be granted over the lifetime of the project.

8.8 Operating aid for the promotion of energy from renewable sources and of renewable hydrogen in small projects and renewable energy communities (Article 43)

1.

Operating aid for the promotion of energy from renewable sources and of renewable hydrogen in small projects and renewable energy communities, with the exception of electricity produced from renewable hydrogen, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2.

For the purposes of this Article small projects are defined as follows:

(i)

for electricity generation or storage – projects below or equal to 1 MW of installed capacity;

(ii)

for electricity consumption – projects with a maximum demand below or equal to 1 MW;

(iii)

for heat generation and gas production technologies – projects below or equal to 1 MW of installed capacity or equivalent;

(iv)

for the production of renewable hydrogen – projects below or equal to 3 MW of installed capacity or equivalent;

(v)

for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels – projects below or equal to an installed capacity of 50 000 tonnes/year;

(vi)

for 100 % SME-owned projects and demonstration projects – projects below or equal to 6 MW installed capacity or maximum demand;

(vii)

for projects 100 % owned by micro or small enterprises for wind generation only – projects below or equal to 18 MW of installed capacity.

2a.

Aid to renewable energy communities shall be exempted from the notification requirement of Article 108(3) of the Treaty only for projects with an installed capacity or maximum demand below or equal to 6 MW from all renewable sources except for wind energy only, for which aid shall be granted to installations with an installed capacity below or equal to 18 MW.

2b.

Operating aid for the production of hydrogen shall be exempted from the notification requirement of Article 108(3) of the Treaty only for installations producing exclusively renewable hydrogen.

3.

Operating aid for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts and are made from the feedstock listed in Annex IX to that Directive.

(no point 4)

5.

Aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the net extra cost ('funding gap') necessary to meet the objective of the aid measure, compared to the counterfactual scenario in the absence of aid. A detailed assessment of the net extra cost is not required if the aid amounts are determined through a competitive bidding process, because the latter provides a reliable estimate of the minimum aid required by potential beneficiaries.

6.

Aid shall only be granted over the lifetime of the project.

7.

Aid shall be granted as a premium in addition to the market price or in the form of a contract for difference whereby the generators sell their electricity directly in the market.

8.

Aid beneficiaries shall be subject to standard balancing responsibilities. Beneficiaries may outsource balancing responsibilities to other undertakings on their behalf, such as aggregators. Furthermore, aid shall not be paid for any periods where prices are negative. For the avoidance of doubt, this applies as of the moment when prices turn negative.

9.

Small-scale renewable electricity installations and demonstration projects may benefit from aid in the form of direct price support that covers the full costs of operation and from an exemption from the requirement to sell the electricity produced on the market, in accordance with Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale for the purposes of this paragraph if their capacity is below the applicable threshold under Article 5(2), point (b), or Article 5(4) of Regulation (EU) 2019/943.

8.9 Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation (Article 45)

1.

Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2.

Aid under this Article may be granted for the following activities :

(a)

the remediation of environmental damage, including damage to the quality of the soil, surface water or groundwater or to the marine environment;

(b)

the rehabilitation of natural habitats and ecosystems from a degraded state;

(c)

the protection or restoration of biodiversity or of ecosystems to contribute to achieving the good condition of ecosystems or to protect ecosystems that are already in good condition;

(d)

the implementation of nature-based solutions for climate change adaptation and mitigation.

3.

This Article shall not apply to aid to make good the damage caused by natural disasters, such as earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.

4.

This Article shall also not apply to aid for remediation or rehabilitation following the closure of power plants and mining or extraction operations.

5.

Without prejudice to Directive 2004/35/CE of the European Parliament and of the Council (63) or other relevant Union rules on liability for environmental damage, where the entity or undertaking liable for the environmental damage under the law applicable in each Member State is identified, that entity or undertaking shall finance the works necessary to prevent and correct environmental degradation and contamination in accordance with the 'polluter pays' principle, and no aid shall be granted for the works that the entity or undertaking would be legally required to conduct. The Member State shall take all necessary measures, including legal action, to identify the liable entity or undertaking at the origin of the environmental damage and make it bear the relevant costs. Where the entity or undertaking liable under the applicable law cannot be identified or made to bear the costs of remediating the environmental damage it has caused, in particular because the liable undertaking has ceased to legally exist and no other undertaking can be regarded as its legal or economic successor, or where there is insufficient financial security to meet the costs of remediation, aid may be granted to support the remediation or rehabilitation works. Aid shall not be granted for the implementation of compensatory measures referred to in Article 6(4) of Council Directive 92/43/EEC (64). Aid may be granted under this Article to cover the extra costs necessary to increase the scope or ambition of those measures, beyond the legal obligations under Article 6(4) of Directive 92/43/EEC.

6.

For investments in the remediation of environmental damage or the rehabilitation of natural habitats and ecosystems, the eligible costs shall be the costs incurred for the remediation or rehabilitation works, less the increase in the value of the land or property.

7.

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

8.

For investments in the protection or restoration of biodiversity and in the implementation of nature-based solutions for climate change adaptation and mitigation, the eligible costs shall be the total costs of the works resulting in the contribution to protecting or restoring biodiversity or in the implementation of nature-based solutions for climate change adaptation and mitigation.

9.

The aid intensity shall not exceed:

(a)

100 % of the eligible costs for investments in the remediation of environmental damage or the rehabilitation of natural habitats and ecosystems;

(b)

70 % of the eligible costs for investments in the protection or restoration of biodiversity and in nature-based solutions for climate change adaptation and mitigation.

10.

The aid intensity for investments in the protection or restoration of biodiversity and in the implementation of nature-based solutions for climate change adaptation and mitigation 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.

8.10 Investment aid for energy efficient district heating and/or cooling (Article 46)

1.

Investment aid for the construction, extension or upgrade of energy efficient district heating and/or cooling systems, which includes the construction, extension or the upgrade of heating or cooling generation installations and/or thermal storage solutions and/or the distribution network, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2.

Aid shall only be granted for the construction, extension or upgrade of district heating and/or cooling systems that are or are to become energy efficient as defined in Article 2, point (41), of Directive 2012/27/EU. Where the system does not yet become fully energy efficient as a result of the supported works on the distribution network, the additional upgrades required to fulfil the conditions for falling under the definition of energy efficient district heating and/or cooling shall, for

heating and/or cooling generation facilities which are subject to the aid, commence within 3 years from the start of the supported works on the distribution network.

3.

Aid may be granted for energy generation based on renewable sources, including heat pumps compliant with Annex VII to Directive (EU) 2018/2001, waste heat or high-efficient cogeneration, as well as thermal storage solutions. Aid for energy generation based on waste may be based either on waste that meets the definition of renewable energy sources or waste used to fuel installations that meet the definition of high-efficiency cogeneration. Waste used as input fuel must not circumvent the waste hierarchy principle as defined in Article 4(1), of Directive 2008/98/EC.

4.

Aid shall not be granted for the construction or upgrade of fossil fuel based generation facilities, except for natural gas. Aid for the construction or upgrade of natural gas based generation facilities may be granted only where compliance with the 2030 and 2050 climate targets is ensured in accordance with Annex 1, section 4.30 of Delegated Regulation (EU) 2021/2139.

5.

Aid for upgrades of storage and distribution networks that transmit heating and cooling generated based on fossil fuels may only be granted where all of the following conditions are met:

(a)

the distribution network is or becomes suitable for the transmission of heating or cooling generated from renewable energy sources and/or waste heat;

(b)

the upgrade does not result in an increased generation of energy from fossil fuels except for natural gas. In case of an upgrade to the storage or network distributing heating and cooling generated from natural gas, in as far as the upgrade results in an increased generation of energy from natural gas, those generation facilities need to be in compliance with the 2030 and 2050 climate targets, in accordance with Annex 1, section 4.31, to Delegated Regulation (EU) 2021/2139.

6.

The eligible costs shall be the investment costs related to the construction or upgrade of an energy efficient district heating and/or cooling system.

7.

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.

8.

The aid intensity may be increased by 15 percentage points for investments using only renewable energy sources, waste heat, or a combination of the two, including renewable cogeneration.

9.

As an alternative to paragraph 7, the aid intensity may reach up to 100 % of the funding gap. The aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the funding gap as defined under Article 2, point (118). A detailed assessment of the net extra cost is not required if the aid amounts are determined through a

competitive bidding process, because the latter provides a reliable estimate of the minimum aid required by potential beneficiaries.

8.11 Investment aid for resource efficiency and for supporting the transition towards a circular economy (Article 47)

1.

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

2.

The aid shall be granted for the following types of investments:

(a)

investments improving resource efficiency through one or both of the following:

(i)

a net reduction in the resources consumed in the production of a given quantity of output compared to a pre-existing production process used by the beneficiary or to alternative projects or activities listed under paragraph 7. The resources consumed shall include all material resources consumed, with the exception of energy, and the reduction shall be determined by measuring or estimating consumption before and after the implementation of the aid measure, taking into account any adjustment for external conditions that may affect resource consumption;

(ii)

the replacement of primary raw materials or feedstock with secondary (re-used or recovered, including recycled) raw materials or feedstock;

(b)

investments for the prevention and reduction of waste generation, preparing for re-use, decontaminating and recycling of waste generated by the beneficiary or investments for the preparing for re-use, decontaminating and recycling of waste generated by third parties and which would otherwise be unused, disposed of, or be treated based on a treatment operation that is situated lower in the priority order of the waste hierarchy referred to in Article 4(1), of Directive 2008/98/EC or in a less resource-efficient manner, or would lead to a lower quality of recycling output;

(c)

investments for the collection, sorting, decontamination, pre-treatment and treatment of other products, materials or substances generated by the beneficiary or by third parties and which would otherwise be unused or used in a less resource-efficient manner;

(d)

investments for the separate collection and sorting of waste with a view to its preparing for re-use or recycling.

3.

Aid for waste disposal and waste recovery operations to generate energy shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

4.

The aid shall not relieve undertakings that generate waste from any costs or obligations relating to the treatment of waste for which they are liable under Union or national law, including under extended producer responsibility schemes, or from costs that should be considered as normal costs for an undertaking.

5.

The aid must not incentivise the generation of waste or the increased use of resources.

6.

Investments related to technologies constituting an already profitable established commercial practice throughout the Union shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

7.

The eligible costs shall be the extra investment costs determined by comparing the total investment costs of the project with those of a less environmentally-friendly project or activity that shall be one of the following:

(a)

a counterfactual scenario consisting in a comparable investment that would credibly be realised in a new or pre-existing production process without aid and which does not achieve the same level of resource efficiency;

(b)

a counterfactual scenario consisting in treating the waste based on a treatment operation that is situated lower in the priority order of the waste hierarchy referred to in Article 4(1), of Directive 2008/98/EC or treating the waste, other products, materials or substances in a less resource-efficient way;

(c)

a counterfactual scenario consisting in a comparable investment in a conventional production process using primary raw material, or feedstock, if the obtained secondary (re-used or recovered) product is technically and economically substitutable with the primary product.

In all situations listed in the first subparagraph, points (a) and (c), the counterfactual scenario shall correspond to an investment with comparable output capacity and lifetime that complies with Union standards already in force. The counterfactual scenario shall be credible in the light of legal requirements, market conditions and incentives.

Where the investment consists in installing an add-on component to an already existing facility, for which there is no less environmentally-friendly equivalent, or where the aid applicant can demonstrate that no investment would take place in the absence of aid, the eligible costs shall be the total investment costs.

8.

The aid intensity shall not exceed 40 % 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.

9.

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.

10. Aid shall not be granted under this Article for investments undertaken to comply with Union standards that have been adopted and are in force. Aid may be granted under this Article for investments undertaken to comply with Union standards that have been adopted but are not yet in force, provided that the investment is implemented and finalised at least 18 months before the standard enters into force.

8.12 Investment aid for energy infrastructure (Article 48)

1. Investment aid for the construction or upgrade of energy infrastructure shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid for energy infrastructure that is partly or fully exempted from third party access or tariff regulation in accordance with internal energy market legislation shall not be exempted under this Article from the notification requirement of Article 108(3) of the Treaty.

3. Aid for investments in electricity and gas storage projects shall not be exempt from the notification requirement under this Article.

4. Aid for gas infrastructure shall only be exempted from the notification requirement of Article 108(3) of the Treaty where the infrastructure in question is dedicated to the use for hydrogen and/or for renewable gases, or used for the transport of more than 50 % hydrogen and renewable gases.

5. The eligible costs shall be the total investment costs.

6. The aid intensity may reach up to 100 % of the funding gap. The aid shall be limited to the minimum needed for carrying out the aided project or activity. This condition is fulfilled if the aid corresponds to the funding gap as defined under Article 2, point (118). A detailed assessment of the net extra cost is not required if the aid amounts are determined through a competitive bidding process, because it provides a reliable estimate of the minimum aid required by potential beneficiaries.

8.13 Aid for studies and consultancy services on environmental protection and energy matters (Article 49)

1. Aid for studies or consultancy services, including energy audits, directly linked to investments eligible for aid under this Section shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Where the entire study or consultancy service concerns investments eligible for aid under this Section, the eligible costs shall be the costs of the study or consultancy service. Where only part of the study or consultancy service concerns investments eligible for aid under this Section, the eligible costs shall be the costs of the part of the study or consultancy service relating to those investments.

2a.

Aid shall be granted irrespective of whether the findings of the study or the consultancy service are followed by an investment eligible for aid under this Section.

3.

The aid intensity shall not exceed 60 % of the eligible costs.

4.

The aid intensity may be increased by 20 percentage points for studies or consultancy services undertaken on behalf of small undertakings and by 10 percentage points for studies or consultancy services undertaken on behalf of medium-sized undertakings.

5.

Aid shall not be granted for energy audits carried out to comply with Directive 2012/27/EU, unless the energy audit is carried out in addition to the mandatory energy audit under that Directive.

9. Form of Aid

Only transparent forms of aid may be paid, (i.e. in which it is possible to calculate precisely the gross grant equivalent as a percentage of eligible expenditure ex ante without need to undertake a risk assessment) such as capital grants, and feasibility studies grants.

10. Definitions

For the purposes of this scheme the definitions set out Article 2 and the definitions section for environmental aid in the Regulation, on the application of Articles 107 and 108 of the TFEU to investment shall apply.

11. Period of Validity

This scheme shall operate from 1 July 2023 until 31 December 2026.