



CONFERENZA DELLE REGIONI E DELLE PROVINCE AUTONOME
13/065/CR7b/C3

**Posizione della Conferenza delle Regioni e delle Province Autonome
sulla proposta di regolamento della Commissione europea che dichiara
alcune categorie di aiuti compatibili con il mercato interno in applicazione
degli articoli 107 e 108 del Trattato sul Funzionamento dell'Unione europea
(Regolamento generale di esenzione per categoria)**

La Conferenza delle Regioni e delle Province Autonome prende atto positivamente del contributo tecnico, allegato al presente documento, elaborato dal coordinamento in materia di aiuti di Stato della Commissione Affari Comunitari, relativamente alla proposta di regolamento della Commissione europea che dichiara alcune categorie di aiuti compatibili con il mercato interno in applicazione degli articoli 107 e 108 del Trattato sul Funzionamento dell'Unione europea (Regolamento generale di esenzione per categoria).

Il documento tecnico delle Regioni e delle Province autonome è stato trasmesso al Dipartimento per le politiche europee della Presidenza del Consiglio dei Ministri e alla Commissione europea quale contributo alla consultazione pubblica avviata dalla Commissione europea nell'ambito del processo di modernizzazione della normativa in materia di aiuti di Stato, conclusasi il 28 giugno 2013.

Roma, 11 luglio 2013



EUROPEAN COMMISSION
Competition DG

**COORDINAMENTO TECNICI AIUTI DI STATO DELLE REGIONI E DELLE
PROVINCE AUTONOME**

**CONTRIBUTO TECNICO ALLA CONSULTAZIONE DELLA COMMISSIONE
EUROPEA (scadenza 28/06/2013)**

Legenda: **Integrazioni**, **Eliminazioni**, **Commenti**

DRAFT DG COMPETITION PROPOSAL

COMMISSION REGULATION (EU) N° .../...

of **XXX**

**declaring certain categories of aid compatible with the internal market in application of
Articles 107 and 108 of the Treaty**

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DRAFT DG COMPETITION PROPOSAL

COMMISSION REGULATION (EU) No .../..

of XXX

**declaring certain categories of aid compatible with the internal market in application of
Articles 107 and 108 of the Treaty**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid¹, and in particular Article 1(1)(a) and (b) thereof,

[Having published a draft of this Regulation [*OJ reference*],]

[After consulting the Advisory Committee on State Aid,]

Whereas:

<p>(1) State funding meeting the criteria in Article 107(1) of the Treaty on the Functioning of the European Union ("the Treaty") constitutes State aid and requires notification to the Commission by virtue of Article 108(3) of the Treaty. However, according to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty the Commission may adopt regulations relating to these categories of State aid. By virtue of Regulation (EC) No 994/98, the Council decided, in accordance with Article 109 of the Treaty, that the following categories may be exempt from the notification requirement: aid to small and medium-sized enterprises ('SMEs'), aid in favour of research and development, aid in favour of environmental protection,</p>	
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¹ OJ L 142, 14.5.1998, p. 1.

<p>employment and training aid and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid. On that basis, the Commission adopted Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the internal market in application of Articles 87 and 88 of the Treaty (hereinafter "General block exemption Regulation")² which applies until 31 December 2013.</p>	
<p>(2) With its Communication on EU State Aid Modernisation (SAM)³, the Commission launched a wider review of the State aid rules. The main objectives of this modernisation are (i) to achieve sustainable, smart and inclusive growth in a competitive internal market, while contributing to Member State efforts towards a more efficient use of public finances; (ii) to focus Commission ex ante scrutiny of aid measures on cases with the biggest impact on the internal market, while strengthening Member State cooperation in state aid enforcement; and (iii) to streamline the rules and provide for faster, better informed and more robust decisions based on a clear economic rationale, a common approach and clear obligations.</p>	
<p>(3) This Regulation, allows for a better prioritisation of enforcement activities, greater simplification and should be combined with greater transparency, effective evaluation and the control of compliance with the State aid rules at national and Union levels, while keeping proportionality and preserving the institutional competences of the Commission and the Member States.</p>	
<p>(4) The Commission's experience in applying Regulation (EC) No 800/2008 has allowed it, on the one hand, to better define the conditions under which certain categories</p>	

² OJ L 214, 9.8.2008, p. 3.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU State Aid Modernisation (SAM), 8.5.2012, COM (2012) 209 final.

<p>of aid can be considered compatible with the internal market and to extend the scope of block exemptions and, on the other hand, made clear the necessity to strengthen transparency, monitoring and allow for a proper evaluation of large schemes in light of their effect on competition in the internal market.</p>	
<p>(5) The general conditions for the application of this Regulation can be defined on the basis of a set of common principles that ensure that the aid serves a purpose of common interest, meets a well-identified market failure or cohesion need, has a clear incentive effect, is appropriate and proportionate, is awarded in full transparency and subject to a control mechanism and regular evaluation, and does not distort competition and trade beyond what can be accepted from a common interest perspective.</p>	
<p>(6) Any aid that fulfils all the conditions laid down in this Regulation both general and specific to the relevant categories of aid should be exempt from the notification obligation laid down in Article 108(3) of the Treaty.</p>	
<p>(7) State aid within the meaning of Article 107(1) of the Treaty not covered by this Regulation remains subject to the notification requirement of Article 108(3) of the Treaty. This Regulation is without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation.</p>	
<p>(8) In view of the potential of large schemes to distort competition, this Regulation should not apply to schemes with a planned or effective yearly expenditure exceeding a threshold based on national GDP and an absolute value, notably with a view to subjecting them to regular evaluation.</p>	
<p>(9) This Regulation should not apply to aid favouring domestic over imported products or aid to export-related activities. In</p>	<p>Si chiede che la Commissione europea definisca in modo più chiaro quali attività devono considerarsi riconducibili</p>

<p>particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market should not normally constitute aid to export-related activities.</p>	<p>all'esportazione: nei casi di regimi che finanziano l'internazionalizzazione delle PMI, ad esempio, il confine tra quest'ultima e la "costituzione di reti di distribuzione o altre spese correnti connesse all'attività di esportazione" risulta spesso di difficile definizione.</p>
<p>(10) This Regulation should apply in principle across most sectors of the economy. However, in some sectors the scope needs to be limited in light of the special rules applicable. In the fisheries and aquaculture sector, this Regulation should apply only to training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, and aid for disadvantaged and disabled workers. In the primary production of agricultural products, this Regulation should only apply to operating regional aid (compensation for additional costs other than transport costs in an outermost region), aid for research and development, innovation aid for SMEs, training aid, environmental aid and aid for disadvantaged and disabled workers to the extent that these categories of aid are not covered by Commission Regulation ... [replacing Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Article 107 and 108 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products].</p>	<p>Si ritiene opportuno mantenere la possibilità di esentare, a norma del GBER e non tramite altra normativa, i regimi a favore della formazione anche per le imprese che operano in attività connesse alla produzione primaria di prodotti agricoli, come già previsto nel reg.800.</p>
<p>(11) Except for training aid where specific provisions exist in Commission Regulation [agricultural block exemption regulation], this Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met. Neither on-farm activities necessary for preparing a product for the first sale, nor the first sale by a primary producer to resellers or processors nor any activity preparing a product for a first sale should be considered processing or marketing for the purposes of this Regulation. The Court of Justice of the European Union has established that, once the Union has legislated for the</p>	<p>Appare contraddittorio che da un lato il regolamento sia esteso in tutti i suoi aspetti (tranne che per la formazione) alle attività di trasformazione e commercializzazione svolte non solo da imprese di trasformazione, ma anche da un'impresa agricola, dall'altro si escludano dall'esenzione per gli aiuti alla formazione le imprese industriali di trasformazione e commercializzazione.</p> <p>La circostanza è particolarmente rilevante se si considera che molte imprese del settore alimentare svolgono attività di trasformazione sia di prodotti di cui all'Allegato I, sia di prodotti non agricoli. La</p>

<p>establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. This Regulation should therefore not apply to aid the amount of which is fixed on the basis of the price or quantity of products purchased or put on the market, nor should it apply to aid which is linked to an obligation to share it with primary producers.</p>	<p>maggior parte dei grossi marchi producono e/o commercializzano una gamma di prodotti che vanno, ad esempio, dalla pasta e prodotti secchi (non Allegato I) all'olio, ai sughi pronti, ai prodotti sott'olio, all'aceto (Allegato I). Se le imprese di questo tipo vorranno fare formazione ai propri dipendenti (ad esempio del settore commerciale, o dell'amministrazione e finanza, che sono trasversali ai diversi rami d'attività) dovranno rapportarsi a due regimi diversi, con problemi non indifferenti di progettazione, imputazione dei costi e rendicontazione. E le amministrazioni, a loro volta, dovranno dotarsi di regimi per gli aiuti alla formazione che prevedano situazioni di questo tipo, con conseguente aggravio procedurale sia per l'amministrazione che per i beneficiari.</p>
<p>(12) Taking account of Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines⁴, this Regulation should not apply to aid aimed at facilitating the closure of uncompetitive coal mines under Council Decision of 10 December 2010. Apart from this type of aid, this Regulation shall apply to the coal sector with the exception of regional aid.</p>	
<p>(13) The Commission must ensure that authorised aid does not alter trading conditions in a way contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market should be excluded from the scope of this Regulation.</p>	
<p>(14) Without prejudice to measures for training, retraining and relocating the staff of firms in difficulty as foreseen by an approved restructuring plan, aid granted to undertakings in difficulty should be excluded from the scope of this Regulation, since such aid should be</p>	<p>Si propone tale integrazione ai fini della massima coerenza con i vigenti orientamento 2004/C 244/02 ed in particolare con il punto 65 in cui la Commissione considera tale tipo di aiuti relativi a programmi di formazione, riqualificazione o ricollocamento del</p>

⁴ OJ L 336, 21.12.2010, p. 24.

<p>assessed under the Guidelines on State aid for rescuing and restructuring firms in difficulty⁵ in order to avoid their circumvention. In order to provide legal certainty, it is appropriate to establish clear criteria that do not require an assessment of all the particularities of the situation of an undertaking to determine whether an undertaking is considered to be in difficulty for the purposes of this Regulation.</p>	<p>personale di imprese in difficoltà soggette a ristrutturazione come “sistematicamente compatibili”.</p>
<p>(15) State aid enforcement is highly dependent on the cooperation of Member States. Therefore, Member States should take all necessary measures to ensure compliance with this Regulation, including compliance of individual aid grants under block-exempted schemes.</p>	
<p>(16) Due to the higher risk of distortion of competition, large amounts of aid granted either individually or cumulatively should be assessed by the Commission upon notification. Thresholds should therefore be set for each category of aid within the scope of this Regulation at a level which takes into account the category of aid concerned and its likely effect on competition. Any aid granted above those thresholds remains subject to the notification requirement of Article 108(3) of the Treaty.</p>	
<p>(17) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent ex ante without the need to undertake a risk assessment ('transparent aid'). For certain specific aid instruments, such as loans, guarantees, fiscal measures, risk finance measures and, in particular, repayable advances, this Regulation should define the conditions under which they can be considered transparent. Aid comprised in guarantees should be considered as transparent if the gross grant equivalent has</p>	

⁵ OJ C 244, 1.10.2004, p. 2, prolonged by the Commission communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004, OJ C 296, 2.10.2012, p.3.

<p>been calculated on the basis of safe-harbour premiums laid down for the respective type of undertaking. For instance, for small and medium-sized enterprises, the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees⁶ indicates levels of annual premium above which a State guarantee would be deemed not to constitute aid.</p>	
<p>(18) To ensure that the aid is necessary and acts as an incentive to further develop activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would engage under market conditions alone. Aid should therefore only be exempt from notification under this Regulation if the work on the aided project or activity starts after the beneficiary has submitted a written application for the aid.</p>	
<p>(19) SUPPLEMENTARY OPTION FOR INCENTIVE EFFECT FOR LARGE ENTERPRISES: <i>As regards any aid covered by this Regulation granted to a beneficiary which is a large enterprise, the Member State should, in addition to the conditions applying to SMEs, also ensure that the beneficiary has analysed, in an internal document, the viability of the aided project or activity with aid and without aid. The Member State should verify that this internal document confirms a material increase in size or scope of the project/activity, a material increase in the total amount spent by the beneficiary on the subsidised project or activity or a material increase in the speed of completion of the project/activity concerned. As regards regional aid, incentive effect may also be established on the basis of the fact that the investment project would not have been carried out as such in the assisted region concerned in the absence of the aid.</i></p>	
<p>(20) The incentive effect of ad hoc aid granted to large enterprises is most of the time difficult to establish, which is why this form of aid should be excluded from the</p>	<p>La definizione delle condizioni ex ante necessarie per assumere che l'aiuto alla grande impresa abbia un effetto incentivante, si risolve in un mero aggravio burocratico</p>

⁶ OJ C 155, 20.6.2008, p. 10.

~~scope of application of this Regulation. The Commission will examine the existence of incentive effect of such aid in the context of the notification and on the basis of the criteria established in the applicable guidelines, frameworks or other Community instruments.~~

(20) **ALTERNATIVE OPTION FOR AD HOC AID TO LARGE ENTERPRISES:** *Ad hoc* aid granted to large enterprises should be included in the scope of this Regulation under the condition that the Member State has verified before, that documentation prepared by the beneficiary establishes a material increase in the size, scope or amount of the project or activity.

(per l'amministrazione concedente ma viepiù per l'impresa beneficiaria) se dissociata da un effettivo obbligo di verifica di tali condizioni ex post, che generalmente viene rimesso alla discrezionalità amministrativa dello Stato membro. Si creano pertanto situazioni paradossali in cui, ai fini del rispetto della regola dell'effetto incentivante, che le amministrazioni concedenti generalmente inseriscono testualmente nei bandi o nei regolamenti, le imprese si trovano a dover sottoscrivere impegni pro futuro di cui non possiedono alcuna certezza ma di cui soprattutto non hanno alcuna idea delle conseguenze in caso di mancato rispetto qualora questo dovesse, in un futuro peraltro non definito, essere controllato.

Pertanto, si ritiene che tale disposizione perda di efficacia o addirittura risulti controproducente se dissociata da un meccanismo di controllo ex post parimenti obbligatorio e definito in modalità, tempistiche e conseguenze.

Sarebbe preferibile che si prevedesse solo un impegno degli Stati membri a mettere in atto procedure che garantiscano una maggiore efficacia degli aiuti (ad esempio procedure a sportello, che inducono i beneficiari a tener conto dell'aiuto nel proprio business plan; cosa non garantita, peraltro, da una dichiarazione di intenti ex ante).

(21) Automatic fiscal schemes should continue to be subject to a specific condition concerning the incentive effect, in light of the fact that the aid resulting from such schemes is granted within the framework of different procedures than other categories of aid. That specific condition means that the aforementioned schemes should have been adopted before work on the aided project or activity started. However, this condition should not apply in the case of fiscal successor schemes provided the activity was already covered by the previous fiscal schemes. For the assessment of the incentive effect of such schemes, the crucial moment is the moment when the fiscal measure was set out for the first time in the original scheme, which is then replaced by the successor

scheme.	
<p>(22) As regards aid for the recruitment of disadvantaged workers in the form of wage subsidies aid compensating for the additional costs of employing disabled workers, aid for SMEs' access to finance aid and aid in the form of reductions of environmental taxes, the existence of an incentive effect may be presumed if specific conditions set out for those categories of aid in this Regulation are fulfilled.</p>	
<p>(23) With a view to ensuring that aid is proportionate and limited to the amount necessary, maximum aid amounts should, whenever possible, be defined in terms of aid intensities in relation to a set of eligible costs. Where the maximum aid intensity cannot be set, because eligible costs cannot be identified or in order to provide simpler instruments for small amounts, maximum aid amounts defined in nominal terms should be set out in order to ensure proportionality of aid measures. The aid intensity and the maximum aid amounts should be fixed, in the light of the Commission's experience, at a level that minimises distortions of competition in the aided sector while appropriately addressing the market failure or cohesion issue concerned. For regional investment aid, the aid intensity has to comply with the allowable aid intensities under the regional aid maps.</p>	
<p>(24) For the calculation of aid intensity, all figures used should be taken before any deduction of tax or other charges. Aid payable in several instalments should be discounted to its value at the moment of granting. The eligible costs should also be discounted to their value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the amount of aid in the case of aid which does not take the form of a grant should be the reference rate applicable at the time of the grant, as laid down in the Commission Communication on the revision of the</p>	

<p>method for setting the reference and discount rates⁷. The identification of eligible costs should be supported by clear, specific and up-to date documentary evidence. Where aid is awarded by means of tax advantages, aid tranches should be discounted on the basis of the reference rates applicable on the various dates when the tax advantages become effective. The use of aid in the form of repayable advances should be promoted, since such risk-sharing instruments are conducive to strengthened incentive effect of aid. It is therefore appropriate to establish that where aid is granted in the form of repayable advances the applicable aid intensities laid down in this Regulation might be increased, with the exception of regional aid (since the latter may be exempt only if it complies with approved maps).</p>	
<p>(25) In the case of tax advantages on future taxes, the applicable reference rate and the exact amount of the aid tranches may not be known in advance. In such a case, Member States should set in advance a cap on the discounted value of the aid respecting the applicable aid intensity. Subsequently, when the amount of the aid tranche at a given date becomes known, discounting can take place on the basis of the reference rate applicable at that time. The discounted value of each aid tranche should be deducted from the overall amount of the cap ("capped amount").</p>	
<p>(26) To determine whether the individual notification thresholds and the maximum aid intensities laid down in this Regulation are respected, the total amount of state aid measures for the aided activity or project should be taken into account, regardless of how that support is financed. To the extent that the Commission assesses globally the total amount of public support when authorising Union funds centrally managed by the Commission and ensures consistency with State aid rules, the Union funding that is not directly or indirectly under the control of the Member State and</p>	

⁷ OJ C 14, 19.1.2008, p. 6.

<p>does not constitute State aid should not be taken into account in determining whether the notification thresholds and maximum aid intensities are respected.</p>	
<p>(27) Moreover, this Regulation should specify the circumstances under which different categories of aid may be cumulated. Aid exempted by this Regulation and any other compatible aid exempted under this Regulation or approved by the Commission may be cumulated as long as those measures concern different identifiable eligible costs. Where different sources of aid are related to the same – partly or fully overlapping – identifiable eligible costs, cumulation should be allowed up to the highest aid intensity or aid amount applicable to that aid under this Regulation. This Regulation should also set out special rules for cumulation of aid measures with and without identifiable eligible costs, for cumulation with de minimis aid and for cumulation with aid in favour of disabled workers.</p>	
<p>(28) Given that State aid within the meaning of Article 107(1) of the Treaty is, in principle, prohibited, it is important that all parties have a possibility to check whether an aid is granted in compliance with the applicable rules. Transparency of State aid is, therefore, essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending. To ensure transparency, this Regulation should require each Member State to establish a single State aid website. This website should be self-standing or retrieves information from several websites(portal). On that website the Member States should publish summary information about each aid measure exempted under this Regulation in a standardized format, the full text of each aid measure and information about the award of individual aid. That obligation should be a condition for the compatibility of the individual aid with the internal market. The links to the State aid websites of all the Member States should be published on the</p>	<p>Le informazioni relative a ciascun regime di aiuti sono attualmente disponibili sia sul portale SANI che sul portale SARI. Lo state aid Scoreboard di cui alla pagina web del sito della DG Comp pertanto dispone di tutti gli elementi per garantire accesso trasparente e libero alle informazioni di tutti i regimi di tutti gli Stati membri.</p> <p>La richiesta di creare una banca dati relativa a tutte le singole concessioni comporta un onere sproporzionato rispetto alla finalità perseguita, soprattutto con riferimento ai contributi di importo ridotto.</p> <p>Inoltre, l'efficacia piena ai fini della trasparenza potrebbe essere garantita soltanto da una banca dati europea consultabile in modo simmetrico da tutti gli Stati membri, la cui realizzazione e gestione dovrebbe essere centralizzata e la cui implementazione racciordata alle banche dati oggi esistenti SANI e SARI.</p> <p>Cfr. art. 10.</p>

<p>Commission's website. In accordance with Article 3 of Regulation (EC) No 994/98, summary information on each aid measure exempted under this Regulation should be published in the <i>Official Journal of the European Union</i>.</p>	
<p>(29) To ensure effective monitoring of the aid measures in accordance with Regulation (EC) No 994/98, it is appropriate to establish requirements regarding the reporting by the Member States of aid measures which have been exempted pursuant to this Regulation and the application of this Regulation. To enable the Commission to better monitor the cumulative effects of aid, the Member States should report on individual aid awards exceeding a certain aid amount. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation, in light of the limitation period established in Article 15 of Regulation (EC) No 659/1999⁸.</p>	
<p>(30) To reinforce the effectiveness of general compatibility provisions set out in Chapter I of this Regulation as well as of the provisions regarding the procedural requirements set out in Chapter II, it should be possible for the Commission to withdraw the benefit of the block exemption for the future aid measures in the event of failure to comply with the requirements set out in these Chapters. The Commission may restrict the withdrawal of the benefit of the block exemption to measures in favour of certain beneficiaries or adopted by certain authorities. In case of failure to meet general compatibility conditions set out in Chapter I, aid granted is not covered by this Regulation and, as a consequence, constitutes unlawful aid, which the Commission will examine in the framework of the relevant procedure as set out in Regulation No (EC) No 659/1999. In case of failure to fulfil the requirements of Chapter II, the withdrawal of the benefit of the block exemption in respect</p>	

⁸ OJ L83, 27.3.1999, p. 1.

<p>of the future aid measures does not affect the fact that the past measures were subject to block exemption.</p>	
<p>(31) To eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Union and national initiatives concerning SMEs, as well as for reasons of administrative clarity and legal certainty, the definition of SME used for the purpose of this Regulation should be based on the definition in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises⁹.</p>	
<p>(32) By addressing the handicaps of disadvantaged regions, regional aid promotes the economic, social and territorial cohesion of Member States and the Union as a whole. Regional aid is designed to assist the development of the most disadvantaged areas by supporting investment and job creation in a sustainable context. In areas fulfilling the conditions of Article 107(3)(a) of the Treaty, regional aid may be awarded to promote the setting-up of new establishments, the extension of existing establishments, the diversification of the output of an establishment or a fundamental change in the overall production process of an existing establishment. Considering that large enterprises are less affected by regional handicaps than SMEs when investing in an area fulfilling the conditions of Article 107(3)(c) of the Treaty, regional aid to large enterprises should be exempt from the notification requirement only for initial investments in favour of new activities in those areas (aid for greenfield investments or the diversification of existing establishments into new products).</p>	
<p>(33) Where a regional aid scheme is targeted at particular sectors of the economy, the objective and likely effects of the scheme may be sectorial rather than horizontal. Therefore, sectoral schemes cannot be</p>	

⁹ OJ L 124, 20.5.2003, p. 36

exempt from the notification requirement. However, the Commission, upon notification, can assess their possible positive effects under the applicable guidelines or frameworks. In particular, this is the case for regional aid schemes covering economic activities in the coal sector, the shipbuilding sector, the transport sector and airport infrastructure. However, due to specific characteristics of certain sectors, such as steel and synthetic fibres, it is considered that the negative effects of regional aid in those sectors cannot be outweighed by the positive cohesion effects; for these reasons, regional aid in these sectors cannot be granted. However, the tourism sector plays an important role in national economies and, in general, has a particular positive effect on regional development. Regional aid schemes aimed at tourism activities should therefore be exempt from the notification requirement.

(34) Investments in assisted regions in favour of energy from renewable sources, co-generation and efficient district heating and cooling shall be allowed under the conditions laid down in the environmental section of this Regulation; this shall minimise their high distortive impact on the internal energy market and shall ensure an increased focus on cost efficiency. In view of their high distortive potential impact on the internal energy market, state aid to electricity generation from non-renewable sources and energy infrastructures shall not be exempt from the notification requirement of Article 108(3) of the Treaty.

(35) Given the importance of regional development strategies, investments outside operational programs should be selected according to their contribution to the regional development strategies of the areas concerned. For this purpose, Member States can rely on evaluations of past State aid schemes, impact assessments made by the granting authorities, or expert opinions. To ensure that aid schemes meet the objectives of regional development strategies, objectives must be clearly identified. A scoring system should enable the granting

<p>authority to prioritise and select the investments according to the objectives.</p>	
<p>(36) So as not to favour the capital factor of an investment over the labour factor, it should be possible to measure regional investment aid on the basis of either the costs of the investment or the wage costs of employment directly created by an investment project.</p>	
<p>(37) Regional investment aid should not be exempt from notification when it is awarded to a beneficiary that closes down the same or a similar productive activity in another area in the EEA in the two years preceding the application for the aid or where the beneficiary has concrete plans to close down such an activity within a period of up to two years after the investment is completed.</p>	
<p>(38) The Commission has gained sufficient experience in the application of Article 107(3)(a) and (c) of the Treaty as regards regional operating aid to compensate the transport costs of goods produced in the outermost regions or in sparsely populated areas and the additional production and operating costs (other than transport costs) incurred by beneficiaries established in the outermost regions. Aid to compensate additional costs in the outermost regions can only be compatible with the internal market and can be exempt from the notification requirement of Article 108(3) of the Treaty in so far as the level of that aid is limited to a certain proportion of the income generated by those undertakings in the outermost region concerned. To minimise the environmental impact and emissions, the aid shall be calculation on the basis of the transport mean which results in the lowest external cost to the environment including energy use.</p>	
<p>(39) Investments corresponding to Europe 2020 priorities in green technologies, R&D&I, shift towards low carbon economy undertaken in less developed regions may receive higher aid amounts by means of a</p>	

<p>regional bonus. Unless otherwise specified in this Regulation, such initial investments may be supported under the conditions laid down in different sections of this Regulation.</p>	
<p>(40) SMEs play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market failures, leading to these SMEs suffering from typical handicaps. SMEs often have difficulties in obtaining capital or loans, given the risk-averse nature of certain financial markets and the limited collateral that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. To facilitate the development of the economic activities of SMEs, this Regulation should therefore exempt certain categories of aid when they are granted in favour of SMEs.</p>	
<p>(41) Having regard to the specific handicaps and differences between small and medium-sized enterprises, different basic aid intensities and different bonuses may apply.</p>	
<p>(42) On the basis of the experience gained in applying the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises, there appear to be a number of specific risk capital market failures in the Union in respect of certain types of investments at certain stages of the undertakings' development. Those market failures result from an imperfect matching of supply of and demand for risk capital. As a result, the level of risk capital provided in the market may be too restricted and undertakings do not obtain funding despite having a valuable business model and growth prospects. The main source of market failure relevant to risk capital markets, which particularly affects access to capital by SMEs and which may justify public intervention, relates to imperfect or asymmetric information. It affects not only the provision of risk capital, but also hampers access to debt finance for certain SMEs.</p>	

<p>Consequently, risk finance measures which seek to attract private capital for risk finance provision to unlisted SMEs affected by the funding gap and which ensure profit-driven financing decisions and commercial management of financial intermediaries should be exempt from the notification requirement under certain conditions.</p>	
<p>(43) Under certain conditions, start-up aid for SMEs, aid to alternative trading platforms specialised in SMEs and aid for costs related to the scouting of SMEs prior to their first commercial sale or operating for less than five years following their first commercial sale on a market should also be considered compatible with the internal market and exempt from the notification requirement.</p>	
<p>(44) SMEs-Undertakings participating in the European Territorial Cooperation projects often find difficulties in financing additional costs stemming from the cooperation between partners located in different regions and in different Member States. Given the importance of the European Territorial Cooperation under the Union's cohesion policy, aid for cooperation costs related to projects covered by Commission Regulation [COM(2011)611 ERDF/ETC] should be exempt from the notification requirement.</p>	<p>Considerato che l'esenzione per la CTE è stata introdotta nell'intento di ovviare alle difficoltà applicative delle norme in materia di aiuti di stato al finanziamento delle attività progettuali, a prescindere dalla natura giuridica e dimensionale dei partners progettuali, si ritiene che tale semplificazione procedurale non sia limitata alle sole PMI.</p>
<p>(45) The promotion of research, development and innovation is an important objective in the common interest. Aid for research and development and innovation aid for SMEs can contribute to sustainable economic growth, strengthen competitiveness and boost employment. Experience with the application of Regulation (EC) No 800/2008 and the Community framework for State aid for research and development and innovation aid for SMEs shows that market failures may prevent the market from reaching optimal output and lead to inefficiencies. Such inefficient outcomes generally relate to externalities, public goods/knowledge spillovers, imperfect and asymmetric</p>	

<p>information, and coordination and network failures.</p>	
<p>(46) Aid for research, development and innovation is of particular importance for SMEs, which may experience difficulties in gaining access to new technological developments, knowledge transfer or highly qualified personnel. Aid for research and development projects, aid for feasibility studies, as well as innovation aid for SMEs, including aid to cover industrial property rights costs for SMEs, may remedy these problems and should therefore be exempt from the requirement of notification under certain conditions.</p>	
<p>(47) As regards project aid for research and development, the aided part of the research project should completely fall within the categories of fundamental research, industrial research or experimental development. When a project encompasses different tasks, each task should be qualified as falling under the categories of fundamental research, industrial research or experimental development or as not falling under any of those categories. That qualification need not necessarily be chronological, moving sequentially over time from fundamental research to activities closer to the market. Accordingly, a task which is carried out at a late project stage may be qualified as industrial research. Similarly, an activity carried out at an earlier stage may constitute experimental development. The aided part of the project may also include feasibility studies preparatory to research activities.</p>	
<p>(48) High-quality research infrastructures are increasingly necessary for ground-breaking research and innovation because they attract global talent and are essential in particular for new information and communication technologies and key enabling technologies. Public research infrastructures should continue to partner with industry research. Access to publicly funded research infrastructures should be granted on a transparent and non-</p>	

<p>discriminatory basis and on market terms. If the latter conditions are not respected, the aid measure cannot be exempt from the notification requirement. Multiple parties may own, operate and use a given research infrastructure, and public entities and undertakings may use the infrastructure collaboratively.</p>	
<p>(49) Research infrastructures may perform both economic and non-economic activities. In order to avoid undue State aid to economic activities through public funding of non-economic activities, the costs and financing of economic and non-economic activities must be clearly separable. If an infrastructure is used for both economic and non-economic activities, public funding falls under State aid rules only insofar as it covers costs linked to the economic activities. If the infrastructure is used almost exclusively for a non-economic activity, it may fall outside State aid rules in its entirety, even if it is also used for a purely ancillary economic activity, i.e. an activity which is directly related to and necessary for the operation of the infrastructure or intrinsically linked to its main non-economic use, and is limited in scope.</p>	
<p>(50) The promotion of training and the recruitment / employment of disadvantaged and disabled workers constitutes a central objective of the economic and social policies of the Union and its Member States.</p>	
<p>(51) Training usually generates positive externalities for society as a whole, since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of the Union industry and plays an important role in the Union employment strategy. Such aid should therefore be exempt from the notification requirement under certain conditions. In light of the particular handicaps which SMEs face and the higher relative costs that they must bear when they invest in training, the intensities of aid exempted by this Regulation should be increased for SMEs. Furthermore, the intensities of aid exempted</p>	

<p>by this Regulation should be increased if the training is given to disabled or disadvantaged workers. The characteristics of training in the maritime transport sector justify a specific approach for that sector.</p>	
<p>(52) Certain categories of disabled or disadvantaged workers still experience particular difficulties in entering and remaining in the labour market. For this reason, public authorities are justified in applying measures providing incentives to undertakings to increase the levels of employment of these categories of workers, in particular of young people. Employment costs form part of the normal operating costs of any undertaking. It is therefore particularly important that aid for the employment of disabled and disadvantaged workers should have a positive effect on employment levels of those categories of workers and should not merely enable undertakings to reduce costs which they would otherwise have to bear. Consequently, such aid should be exempt from the notification requirement when it is likely to assist those categories of workers in entering or re-entering and staying in the job market.</p>	
<p>(53) Sustainable growth for a resource efficient, greener and more competitive economy is one of the main pillars of the Europe 2020 growth strategy. Sustainable development is based, amongst other things, on a high level of protection and improvement of the quality of the environment. The area of environmental protection is confronted with market failures so that under normal market conditions, undertakings may not necessarily have an incentive to reduce the pollution caused by them since any such reduction may increase their costs without corresponding benefits.</p>	
<p>(54) On the basis of the experience gained by the Commission in the course of the application of the Community guidelines on State aid for environmental protection, several aid measures can be included in the exemption from the notification requirement. Those exempted measures cover the areas of</p>	

<p>resource efficiency, climate change and energy measures with an environmental benefit.</p>	
<p>(55) In particular, measures concerning energy saving and energy efficiency, cogeneration and district heating target resource efficiency. Measures incentivising undertakings to achieve a higher level of environmental protection than required by Union standards can benefit resource efficiency and the environment more broadly, while aid for the remediation of contaminated sites - which may be justified in cases where the polluter cannot be identified - specifically aims at repairing environmental damage. In this respect, reference is made i.a. to Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage¹⁰, as amended by Directive 2006/21/EC¹¹ and Directive 2009/31/EC¹².</p>	
<p>(56) To achieve the Union renewable energy targets and to the extent additional support is needed on top of a regulatory framework such as Union emission trading scheme, this Regulation provides for the possibility to grant aid on the basis of a technology neutral competitive bidding process which is open to bidders across national borders. Such a process can help the Union to reach its targets in a cost-efficient manner limiting distortions of the internal market. To this extent, Member states are encouraged to engage in cooperation mechanisms foreseen in Directive 2009/28/EC, so as supported energy counts to their national targets.</p>	
<p>(57) Negative prices occur when there</p>	

¹⁰ OJ L 143, 30.4.2004, p. 56.

¹¹ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC, OJ L 102, 11.4.2006, p. 15.

¹² 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: OJ L 140, 5.6.2009, p. 114

<p>is oversupply of electricity. This may also occur due to favourable weather conditions. Renewable producers may continue production until the price falls below the value of the aid. On the one hand, such situation can force all producers to stop their production or to pay for production. On the other hand, it may incentivise the same producers to take demand response measures allowing them to react in more flexible way to falling electricity prices.</p>	
<p>(58) It must also be ensured that the applicable sustainable criteria are fulfilled when providing support to renewable energy. Environmental investment aid for the use of biomass shall be exempt only to the extent the aided investments are used exclusively for the use of sustainable biomass, once such sustainability criteria are adopted.</p>	
<p>(59) Aid in the form of tax reductions under Directive 2003/96/EC¹³ favouring environmental protection covered by this Regulation can indirectly benefit the environment and should be limited to a period of ten years. After this period, Member States should re-evaluate the appropriateness of the tax reductions concerned. However, where a specific Article in this Regulation covers the aid measure provided by a tax exemption this Article applies.</p>	
<p>(60) A correct calculation of the extra investment or production costs to achieve environmental protection is essential to determine whether aid is compatible with Article 107(3) of the Treaty. In light of the difficulties which may arise in determining the extra cost resulting from the investment to improve the environmental protection, this Regulation provides a simplified method for calculating the environmental investment costs, capped by maximum aid intensities.</p>	

¹³ OJ L 283, 31.10.2003, p. 51.

HAS ADOPTED THIS REGULATION:	
CHAPTER I	
<i>Article 1</i> <i>Scope</i>	
1. This Regulation shall apply to the following categories of aid:	
(a) regional aid;	
(b) aid to SMEs in the form of investment aid, operating aid and SMEs' access to finance;	
(c) aid for environmental protection;	
(d) aid for research and development;	
(e) innovation aid for SMEs;	
(f) training aid;	
(g) recruitment and employment aid for disadvantaged and disabled workers.	
2. This Regulation shall not apply to:	Al fine di assicurare un'applicazione omogenea e certa si chiede di integrare le disposizioni con il riferimento ai codici NACE, quando possibile.
(a) schemes for which the planned or effective yearly public expenditure exceeds 0,01% of national gross domestic product (GDP) for the Member State concerned for the previous calendar year ¹⁴ and in so far as the planned or effective annual	Si esprimono forti perplessità con riferimento in particolare ai seguenti due aspetti: 1) i limiti posti al volume di esenzione rischiano di rendere impraticabili le esenzioni "ombrello" utilizzate ad esempio su misure a regia nazionale attuate simmetricamente a livello regionale, o

¹⁴ Using Eurostat annual data on national GDP in purchasing power standards (PPS).

budget of the scheme in question exceeds EUR 100 million. Such schemes shall be notified pursuant to Article 108(3) of the Treaty at the latest six months from the date on which the above condition is met. If several schemes with identical or very similar characteristics are put into effect **in the same Member State by the same granting authority** within a period of three years, those schemes shall be considered jointly for the purpose of the application of this provision.

utilizzate su interventi con un budget pluriennale come accade per le misure cofinanziate dai Fondi Strutturali nell'ambito della Programmazione comunitaria settennale; in questo senso un primo ma non risolutivo emendamento consiste nel valutare l'effetto cumulativo delle esenzioni non già a livello di stato membro, ma di autorità concedente.

2) Il problema dell'effetto cumulo o frazionamento si verifica a maggior ragione per aiuti analoghi e ricorrenti nel tempo da parte di più PPAA (centrali o regionali), ed è molto rilevante sia sul piano sostanziale, tanto per le categorie in esenzione già esistenti, quanto per le categorie che verranno introdotte in futuro (es. per le calamità naturali, sarebbe un problema la sommatoria di aiuti statali e regionali, tanto più se la calamità colpisce più di una Regione), sia sul piano procedurale, in quanto la similarità di esenzioni di diverse autorità eroganti può emergere solo ex post, e in quanto l'applicazione di questa soglia mista sarebbe di difficilissima gestione alla luce della richiesta della Commissione di adeguamento al nuovo GBER degli aiuti aventi durata superiore al 2013 esentati ai sensi del vigente Reg.800/08.

3) Il medesimo problema dell'effetto cumulativo di regimi simili si verifica anche per le misure inserite nei Piani di Sviluppo Rurale (PSR) al di fuori dell'applicazione dell'art. 42 TFUE. Il limite imposto dall'art 1 potrebbe comportare il dover ricorrere alla notifica in via ordinaria con un aggravio della procedura di approvazione dei PSR nel caso in cui venisse applicata tout court la disposizione del limite dei 100 milioni annui in combinazione con l'ultima frase della lettera (a). Sul piano procedurale, inoltre, si evidenzia che qualora non tutte le Regioni aderiscano a notifiche c.d. omnibus del MIPAAF nell'ambito del PSR, come accaduto nella corrente programmazione, una valutazione di mancata notifica potrebbe venir rilevata solo a posteriori a misure ormai nella fase

	<p>esecutiva.</p> <p>4) il limite dei 100 milioni di Euro, in quanto valore assoluto, rischia di avere conseguenze molto differenti a seconda delle dimensioni della realtà in cui si applica.</p> <p>Per queste ragioni si chiede alla Commissione quale sia il fondamento delle cifre proposte (0.01% e 100 milioni di €), in mancanza delle quali, onde evitare conseguenze come quelle evidenziate sopra, si chiede in prima istanza l'espunzione dell'intera lettera a), in seconda istanza la modifica testuale evidenziata.</p>
<p>(b) aid to export-related activities namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;</p>	<p>considerato che, in un contesto di globalizzazione, gli aiuti di Stato alle imprese (ad eccezione chiaramente del sostegno alle attività "di prossimità") hanno potenzialmente e auspicabilmente un effetto sulle esportazioni, si chiede alla Commissione di specificare ed esemplificare la portata di tale esclusione.</p>

<p>(c) aid contingent upon the use of domestic over imported goods.</p>	<p>Considerata la genesi dell'esclusione, riconducibile ai primi regolamenti che prevedevano aiuti alla trasformazione e commercializzazione di prodotti agricoli, si chiede che la Commissione ne specifichi la portata attuale e soprattutto la contestualizzi settorialmente, qualora ritenga ne sia ancora necessario il mantenimento.</p>
<p>3. This Regulation shall not apply to aid in the following sectors:</p>	
<p>(a) fishery and aquaculture, as covered by Council Regulation (EC) No 104/2000¹⁵; within this sector, however, this Regulation shall apply to training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs and aid for disadvantaged and disabled workers;</p>	
<p>(b) primary production of agricultural products; within this sector, however, this Regulation shall apply to the compensation for additional costs other than transport costs in outermost regions under Article (2)(b), aid for training, research and development, innovation aid for SMEs, environmental aid and aid for disadvantaged and disabled workers;</p>	<p>Cfr. Considerando (10)</p>
<p>(c) processing and marketing of agricultural products, in the following cases:</p>	
<p>(i) training aid</p>	<p>Cfr. considerando (11)</p>
<p>(ii) 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</p>	

¹⁵ OJ L17, 21.1.2000, p. 22.

concerned; or	
(ii) where the aid is conditional on being partly or entirely passed on to primary producers;	
(d) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision no 2010/787 ¹⁶ ;	
(e) categories of regional aid listed in Article 14.	
4. This Regulation shall not apply to:	
(a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market;	
(b) ad hoc aid in favour of an undertaking as referred to in point (a);	
(c) aid to undertakings in difficulty.	
(d) ad hoc aid granted to large enterprises, except for ad hoc aid used to supplement aid granted on the basis of regional investment aid schemes.	
<i>ALTERNATIVE OPTION: this provision deleted – ad hoc aid to large enterprises is covered by the GBER, however, see stricter requirements as regards the incentive effect in Article 6]</i>	
5. This Regulation shall not apply to State aid measures, which entail, by themselves, by the conditions	

¹⁶ OJ L 336, 21.12.2010, p. 24.

attached to them or by their financing method a non-severable violation of Union law, in particular:	
(a) aid measures where the grant of aid is subject to the obligation for the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State;	
(b) aid measures where the grant of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services;	
(c) aid measures restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.	
<i>Article 2</i> Definitions	
For the purposes of this Regulation the definitions laid down in Annex I shall apply.	
<i>Article 3</i> Conditions for exemption	
1. Aid schemes, individual aid granted under aid schemes and ad hoc aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty provided that such aid fulfils all the conditions laid down in Chapter I, as well as the relevant conditions laid down in Chapter III	
2. Member States shall take all	

necessary measures to ensure effective compliance with this Regulation, including compliance of individual aid grants under schemes which are exempt from the notification requirement pursuant to this Regulation.	
<i>Article 4</i> Notification thresholds	
This Regulation shall not apply to any individual aid, whether granted ad hoc or on the basis of a scheme, the gross grant equivalent of which exceeds the following thresholds:	
(a) regional investment aid: 75% of the maximum amount of aid that an investment with eligible costs of EUR 100 million could receive applying the maximum aid intensity established in an approved regional map and which is in force on the date of granting the aid;	
(b) SME investment aid: EUR 7,5 million per undertaking per investment project;	
(c) risk finance aid: as laid down in article 19(9);	
(d) aid for start-ups: as laid down in Article 20(3) and (4);	
(e) aid for SMEs' cooperation costs linked to ETC projects: EUR 2 million per undertaking, per project;	
(f) aid for research and development:	
(i) if the project is predominantly fundamental research: EUR 40 million per undertaking, per project;	

(ii) if the project is predominantly industrial research: EUR 20 million per undertaking, per project;	
(iii) if the project is predominantly experimental development: EUR [10] million per undertaking, per project	
(iv) if the aid for research and development projects is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the time of grant, the amounts referred to in points (i), (ii) and (iii) can be increased by [50]%;	
(v) if the project is a EUREKA project or is implemented by a Joint Undertaking established on the basis of Article 187 of the Treaty, the amounts referred to in points (i) to (iii) may be doubled.	
(vi) aid for feasibility studies in preparation for research activities: EUR [7,5] million per study;	
(vii) if the aid concerns the construction or upgrade of research infrastructure: EUR [15] million per infrastructure;	
(a) innovation aid for SMEs: EUR 5 million per beneficiary;	
(b) training aid: EUR 2 million per training project;	
(c) aid for the recruitment of disadvantaged workers: EUR 5 million per undertaking per year;	
(d) aid for the employment of disabled workers in the form	

of wage costs: EUR 10 million per undertaking per year;	
(e) aid compensating for additional costs of employing disabled workers: EUR 10 million per undertaking per year;	
(f) investment aid for environmental protection, including aid for environmental studies: EUR [7,5] million per undertaking per investment project.	
<i>Article 5</i> Transparency of aid	
1. This Regulation shall apply only to transparent aid.	
2. In particular, the following categories of aid shall be considered to be transparent:	
(a) aid comprised in grants and interest rate subsidies;	
(b) aid comprised in loans, where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant;	
(c) aid comprised in guarantees:	
(i) where the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice ¹⁷ ; or	
(ii) where before the implementation, the methodology to calculate the gross grant equivalent of the guarantee has been accepted following notification of that methodology to the Commission under a	Si chiede se il metodo approvato con decisione della Commissione C(2010)4505 def. del 6/7/2010 (Aiuto di Stato N 182/2010 – Italia - Metodo nazionale per calcolare l'elemento di aiuto nelle garanzie a favore

¹⁷ Currently Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 10.

<p>regulation adopted by the Commission in the State aid area, and the approved methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation;</p>	<p>delle PMI) possa considerarsi valido anche ai fini del presente regolamento.</p>
<p>(a) aid comprised in fiscal measures, where the measure provides for a cap ensuring that the applicable threshold is not exceeded;</p>	
<p>(b) aid comprised in risk finance measures if the conditions laid down in Article 19 are fulfilled;</p>	
<p>(c) aid for start-ups if the conditions laid down in Article 20 are fulfilled;</p>	
<p>(d) aid in the form of repayable advances, if the total nominal amount of the repayable advance does not exceed the thresholds applicable under this Regulation or if, before implementation of the measure, the methodology to calculate the gross grant equivalent of the repayable advance has been accepted following its notification to the Commission.</p>	
<p style="text-align: center;"><i>Article 6</i> <i>Incentive effect</i></p>	
<p>1. This Regulation shall apply only to aid which has an incentive effect.</p>	
<p>2. Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid in the form laid down in Annex IV to the Member State concerned before work on the project or activity has started.</p>	<p>Si ritiene che la richiesta di compilare l'allegato IV rappresenti un eccessivo aggravio burocratico soprattutto per le PMI, e ancor di più per le microimprese.</p> <p>In particolare anche l'analisi contro fattuale di cui al punto 4 dell'allegato IV rappresenterebbe un aggravio sproporzionato sia per le grandi imprese che per le PMI,</p>

	<p>senza peraltro aggiunge nulla sotto il profilo della dimostrazione dell'efficacia dell'aiuto, che dovrebbe rapportarsi alla strategia globale dell'impresa, non solo all'investimento candidato allo specifico aiuto. Il mancato ottenimento dell'agevolazione richiesta potrebbe ad esempio non avere alcun effetto sull'investimento in questione, ma comportare una rinuncia ad un altro investimento: l'aiuto avrebbe dunque ugualmente un effetto di incentivazione.</p> <p>Si chiede quindi che sia mantenuta la regola vigente nel Reg. 800, senza quindi l'onere aggiuntivo dell'allegato IV per le PMI e che l'allegato IV sia riservato solo agli aiuti ad hoc per le grandi imprese.</p> <p>In subordine, si chiede che siano esonerate dall'allegato IV quantomeno le <u>micro</u> imprese e che l'allegato IV sia comunque semplificato come evidenziato tramite revisioni.</p>
<p>3. <i>SUPPLEMENTARY OPTION 1 FOR LARGE ENTERPRISES: Ad hoc aid granted to large enterprises shall be considered to have an incentive effect if, in addition to fulfilling the condition laid down in paragraph 2, the Member State has verified, before granting the individual aid concerned, that documentation prepared by the beneficiary establishes one or more of the following criteria:</i></p>	<p>Cfr. considerazioni generali sub considerando (20).</p>
<p>(a) <i>a material increase in the size of the project/activity due to the aid;</i></p>	
<p>(b) <i>a material increase in the scope of the project/activity due to the aid;</i></p>	
<p>(c) <i>a material increase in the total amount spent by the beneficiary on the project/activity due to the aid;</i></p>	
<p>(d) <i>a material increase in the</i></p>	

	<i>speed of completion of the project/activity concerned;</i>	
	<i>(e) as regards regional investment aid referred to in Article 15, that the project would not have been carried out as such in the assisted region concerned in the absence of the aid.</i>	
4.	By derogation from paragraph 2, fiscal measures are deemed to have an incentive effect if the following conditions are fulfilled:	
	(a) the fiscal measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and	
	(b) the fiscal measure has been adopted and in force before work on the aided project or activity has started, however it shall not apply in the case of fiscal successor schemes provided the activity was already covered by the previous fiscal schemes.	
5.	By derogation from paragraph 2, the following categories of aid shall be presumed to have an incentive effect if the conditions laid down in the relevant specific provisions in Chapter III are fulfilled:	
	(a) aid for the recruitment of disadvantaged workers in the form of wage subsidies and aid for the employment of disabled workers in the form of wage subsidies, in accordance with Article 28,	
	(b) aid compensating for the additional costs of employing disabled workers, in	

	accordance with Article 29,	
	(c) aid for SMEs' access to finance, in accordance with Articles 17 and 18,	
	(d) aid in the form of reductions in environmental taxes if the conditions laid down in Article 35 are fulfilled.	
	<i>Article 7</i> Proportionality	
1.	This Regulation shall apply only to aid which is proportionate.	
2.	Aid exempted from the notification requirement of Article 108(3) of the Treaty under this Regulation shall be considered to be proportionate if it complies with the maximum aid intensities or amounts established in Chapter III.	
	<i>Article 8</i> Aid intensity and eligible costs	
1.	For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary, without prejudice to the procedures established by the regulations on Structural funds.	Al fine di rendere applicabile le previsioni dei regolamenti sui fondi strutturali per il periodo 2014-2020 relative alle semplificazioni dei costi, è opportuno rendere coerenti le norme.
2.	Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.	
3.	Aid payable in several instalments shall be discounted to its value at the moment of granting. The eligible costs shall be discounted to their value at the moment of	

<p>granting. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time of grant.</p>	
<p>4. Where aid is granted by means of tax advantages, discounting of aid tranches shall take place on the basis of the reference rates applicable when a tax advantage takes effect.</p>	
<p>5. Where aid is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the time of grant, the maximum aid intensities laid down in Chapter III may be increased by [10] percentage points.</p>	
<p>6. Where regional aid is granted in the form of repayable advances, the maximum aid intensities established in a regional aid map in force at the moment of granting the aid may not be increased.</p>	
<p><i>[Article X SME status</i></p>	
<p><i>[Whenever the exemption from the notification requirement of Article 108(3) of the Treaty is limited to SMEs or more favourable conditions apply to SMEs under this Regulation, an SME can only benefit from such an exemption or from more favourable conditions under this Regulation provided it does not lose its SME status within [1] years from the grant of the aid due to becoming a partner or linked enterprise</i></p>	<p>Si chiede in prima istanza l'espunzione di questo articolo per diverse oggettive difficoltà e conseguenze applicative, tra le quali:</p> <p>1) l'applicazione della disposizione potrebbe avvenire solo mediante revoca dell'agevolazione, che rappresenterebbe un vincolo improponibile per l'impresa e soprattutto per le sue strategie future di crescita (tenuto conto che ci si auspica che</p>

<p><i>within the meaning of Article 3 of Annex II with a large enterprise.]</i></p>	<p>l'aiuto oltre che raggiungere la finalità prefissata dalla misura, permetta anche all'impresa di ingrandirsi) e rappresentando un ostacolo all'acquisizione di imprese, potrebbe introdurre una pericolosa stasi del mercato delle acquisizioni delle imprese;</p> <p>2) la previsione diventa inapplicabile nel caso del capitale di rischio: qualora infatti una grande impresa acquistasse l'impresa capitalizzata col capitale di rischio pubblico, questa si troverebbe a dover restituire l'aiuto iniziale. Ciò abbasserebbe inevitabilmente il valore dell'impresa, ne ridurrebbe l'appeal e vanificherebbe dunque la stessa operazione di finanziamento mediante capitale di rischio;</p> <p>3) sebbene condivisibile la ratio della norma proposta, ovvero di impedire che una grande impresa possa approfittare degli aiuti alle PMI per realizzare investimenti e attività attraverso PMI indipendenti con le quali esista un'ipotesi di acquisizione, per acquisirle dopo aver beneficiato degli aiuti dei quali altrimenti non potrebbe godere, si ritiene che gli effetti negativi di tale previsione siano eccessivi, in quanto non è possibile distinguere tra operazioni "orchestrate" e operazioni effettivamente "di mercato", sulle quali non sarebbe corretto intervenire.</p> <p>In seconda istanza, qualora si mantenga la norma, si propone di limitare il vincolo ad un periodo estremamente ridotto (ad esempio un anno), oppure ad un periodo collegato alla durata del progetto finanziato.</p>
<p><i>Article 9 Cumulation</i></p>	
<p>1. In determining whether the individual notification thresholds established in Article 4 and the maximum aid intensities established in Chapter III are respected, the total amount of public support measures for the aided activity or project shall be taken into account,</p>	

<p>regardless of how the measures are financed. However, Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State and does not constitute state aid should not be taken into account, when both such funding and national funding are assessed together for the purpose of compliance with European regulations.</p>	
<p>2. Aid with identifiable eligible costs exempted by this Regulation may be cumulated with:</p>	
<p>(a) any other State aid, as long as those measures concern different identifiable eligible costs,</p>	
<p>(b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.</p>	
<p>3. Aid without identifiable eligible costs exempted under Articles 19, 20 and 21 of this Regulation may be cumulated with any other State aid measure with identifiable eligible costs.</p>	
<p>4. State aid exempted under this Regulation shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of this Regulation.</p>	
<p>5. By way of derogation from paragraph 1(b), aid in favour of disabled workers, as provided for in Articles 28 and 29, may be cumulated with aid exempted under</p>	

<p>this Regulation in relation to the same eligible costs above the highest applicable threshold under this Regulation, provided that such cumulation does not result in an aid intensity exceeding 100% of the relevant costs over any period for which the workers concerned are employed.</p>	
<p style="text-align: center;"><i>Article 10</i> Publication and information</p>	
<p>1. The Member State concerned shall publish on a single State aid website, or on a single website retrieving information from several websites:</p>	<p>Le informazioni relative a ciascun regime di aiuti sono attualmente disponibili sia sul portale SANI che sul portale SARI. Lo state aid Scoreboard di cui alla pagina web del sito della DG Comp pertanto dispone di tutti gli elementi per garantire accesso trasparente e libero alle informazioni di tutti i regimi di tutti gli Stati membri.</p>
<p>(a) the summary information about each aid measure exempt under this Regulation in the standardised format laid down in Annex III;</p>	
<p>(b) the full text of each aid measure, including its amendments, or a link providing access to it;</p>	
<p>(c) the information on each individual aid award in the standardised format laid down in Part III of Annex III.</p>	
<p>2. The information mentioned in point (c) of paragraph 1 shall be organised and accessible in a standardized manner at the level of member States, as described in Annex V, and shall allow for effective search and download functions. The information referred to in paragraph 1 shall be up to date and available for at least 10 years from the date on which the aid was granted.</p>	<p>La richiesta di creare una banca dati relativa a tutte le singole concessioni comporta un onere sproporzionato rispetto alla finalità perseguita, soprattutto con riferimento ai contributi di importo ridotto.</p> <p>Inoltre, l'efficacia piena ai fini della trasparenza potrebbe essere garantita soltanto da una banca dati europea consultabile in modo simmetrico da tutti gli Stati membri, la cui realizzazione e gestione dovrebbe essere centralizzata e la cui implementazione riaccordata alle banche dati oggi esistenti</p>

	<p>SANI e SARI.</p> <p>In subordine si chiede che l'implementazione di un sistema informatico sia giuridico che di monitoraggio economico (per notifiche/esenzioni/de minimis) debba avvenire a livello centrale di Stato membro per uniformare criteri e modalità.</p>
3.	<p>The full text of the scheme or of the ad hoc measure referred to in paragraph 1 shall include, in particular, an explicit reference to this Regulation, by citing its title and publication reference in the <i>Official Journal of the European Union</i> and to the specific provisions of Chapter III concerning that act, or where applicable, to the national law which ensures that the relevant provisions of this Regulation are complied with. It shall be accompanied by its implementing provisions and its amendments.</p>
4.	<p>The Commission shall publish:</p>
	<p>(a) on its website, the links to the State aid websites of all Member States, referred to in paragraph 1;</p>
	<p>(b) in the <i>Official Journal of the European Union</i>, the summary information referred to in point (a) of paragraph 1.</p>

<p style="text-align: center;"><i>Article 11</i> Withdrawal of the benefit of the block exemption</p>	
<p>Where the Member State concerned grants aid allegedly exempted from the notification requirement under this regulation without fulfilling the conditions set out in this Chapter and in Chapter III or fails to meet the requirement set out in Chapter II, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all or some of the future aid measures adopted by the Member State concerned are to be notified to the Commission in accordance with Article 108(3) of the Treaty. The measures to be notified may include, in particular, the measures adopted in favour of certain beneficiaries or the measures adopted by certain authorities of the Member State concerned.</p>	<p>Si ritiene che tanto la causa quanto la conseguenza del mancato rispetto di alcune previsioni del Regolamento siano espresse in termini troppo generici, specialmente se addirittura potenzialmente riguardanti l'intero Stato membro e specialmente se si pensa al fatto che tale formulazione potrebbe legittimare l'ipotesi che una disapplicazione di condizioni soltanto formali del regolamento possano avere conseguenze su misure future dello Stato membro, non già alla sola autorità concedente.</p> <p>Per assicurare maggiore certezza giuridica si potrebbe prevedere una disposizione specifica sul regolamento di procedura, oppure inserire nell'articolo le tipologie di violazione e i relativi soggetti sanzionabili.</p>

CHAPTER II

Procedural requirements

<p style="text-align: center;"><i>Article 12</i> Reporting</p>	
<p>Member States shall transmit to the Commission:</p>	
<p>(a) via the Commission's electronic notification system¹⁸, the summary information referred to in Article 10(1)(a), together with</p>	

¹⁸ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Article 3(4); OJ L 140, 1.4.2004, p.1.

<p>a link providing access to the full text of the aid measure as referred to in Article 10(1)(b), within 20 working days following its entry into force;</p>	
<p>(b) information on each individual aid award exceeding EUR 3 million, with the exception of aid under Section 5, in the format laid down in Part III of Annex III, within 20 working days from the day on which the aid is granted;</p>	
<p>(c) an annual report, as referred to in Chapter III of Commission Regulation (EC) No 794/2004 of 21 April 2004¹⁹, in electronic form on the application of this Regulation, containing the information indicated in Annex III to this Regulation, in respect of each whole year or each part of the year during which this Regulation applies.</p>	

¹⁹ OJ L 140, 30.04.2004, p.1.

<i>Article 13</i> Monitoring	
In order to enable the Commission to monitor the aid exempted from notification by this Regulation, Member States shall maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in this Regulation are fulfilled. Such records shall be kept for 10 years from the date on which the individual aid was granted or the last aid was granted under the schemes. The Member State concerned shall provide the Commission within a period of 20 working days or such longer period as may be fixed in the request, with all the information and supporting documentation which the Commission considers necessary to monitor the application of this Regulation.	

CHAPTER III

Specific Provisions for the Different Categories of Aid

SECTION 1 - REGIONAL AID

<i>Article 14</i> Scope of regional aid	
1. This Regulation shall not apply to:	
(a) regional aid which favours activities in the steel sector, the coal sector, the shipbuilding sector, the synthetic fibres sector, the transport sector and airport infrastructure;	
(b) regional aid in the form of schemes which are targeted at specific sectors of economic activity within the meaning of this Regulation; schemes aimed at tourism activities, broadband infrastructures or agricultural products are not considered to be targeted at	<i>Si chiede alla Commissione di chiarire cosa debba ricondursi a “settori specifici di attività economiche nell’ambito manifatturiero o dei servizi”, e se le attività successivamente elencate devono considerarsi non esaustive o esemplificative. Considerata in particolare la struttura del tessuto produttivo italiano, essenzialmente incardinata su Distretti industriali monosettoriali, che rappresentano</i>

specific sectors of economic activity;	oggi il volano su cui rilanciare le economie locali ed uscire dalla crisi, si ritiene auspicabile che un'amministrazione possa adottare strategie specifiche a favore di determinati settori trainanti o la cui crisi determina pesanti conseguenze per il territorio (ad esempio promuovendo l'innovazione nelle imprese appartenenti a quei settori). Questa possibilità sarebbe oltremodo auspicabile in particolare nelle regioni ammesse alla deroga 107.3.c), qualunque sia il metodo utilizzato per "assegnare" tale deroga.
(c) regional aid in the form of schemes which compensate the transport costs of goods produced in the outermost regions or in sparsely populated areas and:	
(i) favour activities in the production, processing and marketing of products listed in Annex I to the Treaty; or	
(ii) favour activities classified as agriculture, forestry and fishing under section A of the NACE Rev. 2, mining and quarrying under section B of the NACE Rev. 2 and electricity, gas, steam and air conditioning supply under section D of the NACE Rev. 2; or	
(iii) favour transport by pipeline;	
(d) Regional aid to the energy sector (electricity generation, energy infrastructures, cogeneration, district heating);	Si ritiene che tale esclusione rappresenti un fortissimo limite operative e procedurale, soprattutto nei casi di progetti integrati ove l'investimento iniziale nell'area assistita abbia anche una componente energetico-ambientale.
(e) individual regional investment aid to a beneficiary that has closed down the same or a similar activity in the EEA in the two years preceding its application for regional investment aid or which, at the moment of the aid application, has concrete plans to close	Si chiede di specificare cosa si deve intendere per <i>beneficiario</i> , al fine di poter gestire situazioni in cui il soggetto effettua l'operazione che la norma vuole impedire utilizzando il cambio della sola ragione sociale. Qualora la Commissione faccia riferimento al Gruppo, in sintonia con quanto stabilito ai fini del computo degli aiuti "de minimis", si

<p>down such an activity within a period of up to two years after the investment is completed in the area concerned.</p>	<p>chiede di specificare meglio definizioni, modalità e condizioni in coerenza con il regolamento <i>de minimis</i>.</p>
<p style="text-align: center;"><i>Article 15</i> Regional investment aid</p>	
<p>1. Regional investment aid schemes shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.</p>	
<p>Ad hoc aid to supplement aid granted on the basis of regional investment schemes and which does not exceed 50% of the total aid to be granted for the investment, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.</p>	
<p><i>ALTERNATIVE OPTION: this provision deleted, if ad hoc aid to large enterprises is exempted from the notification requirement.</i></p>	<p>Cfr. considerando (20)</p>
<p>2. The aid shall be granted in areas eligible for regional aid as determined in the approved regional aid map for the Member State concerned for the period 2014-2020.</p>	

<p>3. For a regional investment aid scheme outside an operational programme, the Member State shall demonstrate that the measure contributes to a regional development strategy with clearly identified objectives and shall include a scoring system that enables the Member State to prioritise and select the investments according to the objectives of the scheme.</p>	
<p>4. In assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty, the aid may be granted for an initial investment within the meaning of this Regulation, regardless of the size of the beneficiary. In assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, the aid may be granted to SMEs for any form of such an initial investment, whereas aid to large enterprises shall only be granted for an initial investment in favour of a new activity, within the meaning of this Regulation, in the area concerned.</p>	
<p>5. The eligible costs shall be the following:</p>	
<p>(a) investment costs in tangible and intangible assets;</p>	
<p>(b) wage costs of employment directly created by the investment, calculated over a period of two years; or</p>	
<p>(c) a combination of points (a) and (b).</p>	

<p>6. The investment shall be maintained in the recipient area for at least five years, or three years in the case of SMEs, after the completion of the investment. If the aid is calculated on the basis of wage costs, each job created through the investment shall be maintained in the area concerned for a period of five years from the date the post was first filled in or three years in case of SMEs. This shall not prevent the replacement of plant or equipment which has become out-dated due to rapid technological change, provided that the economic activity is retained in the area concerned for the above mentioned minimum period.</p>	
<p>7. For large enterprises, the assets acquired must be new. The acquisition of tangible assets under lease shall fulfil the following conditions:</p>	
<p>(a) for the lease of land and buildings, the lease must continue for at least five years after the anticipated date of the completion of the investment project or three years in the case of SMEs;</p>	
<p>(b) for the lease of plant or machinery, the lease must take the form of financial leasing and contain an obligation to purchase the asset at the expiry of the term of the lease.</p>	
<p>In the case of acquisition of an establishment, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. The transaction shall take place under market conditions. The assets for the acquisition of which aid has already been granted prior to the purchase shall not be considered as eligible. In the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of</p>	

former employees, the condition that the assets shall be bought by an independent investor shall be waived.	
8. Employment directly created by a regional investment project shall fulfil the following conditions:	
(a) posts shall be filled-in within three years of completion of works; and	
(b) the investment project shall lead to a net increase in the number of employees in the undertaking concerned, compared with the average over the previous 12 months.	
9. Regional aid for broadband network development shall fulfil the following conditions:	
(a) aid shall be granted only to areas where there is no infrastructure of the same category (either broadband or NGA) and where none is likely to be developed in the near future; and	
(b) the subsidised network operator must offer active and passive wholesale access under fair and non-discriminatory conditions with the possibility of effective and full unbundling; and	
(c) aid shall be allocated on the basis of a competitive selection process.	
10. Regional aid for research infrastructures shall be granted only to infrastructures that grant access on a transparent and non-discriminatory basis.	

<p>11. The aid intensity in gross grant equivalent shall not exceed the maximum aid intensity established in the regional aid map which is in force at the time the aid is granted in the area concerned. Where the aid intensity is calculated on the basis of paragraph 5, the maximum aid intensity shall not exceed the most favourable amount resulting from the application of that intensity on the basis of investment costs or wage costs. For large investment projects with eligible costs below EUR 100 million, the maximum aid intensity may be granted only for eligible costs up to 50 million. The maximum aid intensity is reduced by 50% in respect of eligible costs exceeding the first EUR 50 million.</p>	
<p>12. For an initial investment linked to European Territorial Cooperation projects covered by [COM(2011)611 ERDF/ETC Regulation], the aid intensity of the area in which the initial investment is located shall apply to all beneficiaries participating in the project. If the initial investment is located in two or more assisted areas, the maximum aid intensity shall be the one applicable in the assisted area where the biggest part of the project activities is incurred. In assisted areas eligible for aid under Article 107(3)(c) of the Treaty, this provision shall apply only to SMEs.</p>	<p>Si evidenzia che il meccanismo, nell'intento di livellare le intensità degli aiuti per i diversi partners di un medesimo progetto in funzione dell'ubicazione prevalente degli investimenti progettuali, crea condizioni di disparità fra progetti analoghi sotto il profilo della tipologia di investimenti ed aree interessate, ma che potrebbero differenziarsi per la distribuzione degli investimenti per categoria di regioni assistite.</p> <p>L'intento della semplificazione procedurale si traduce in un allontanamento dagli obiettivi di ravvicinamento e di riduzione delle diversità propri della cooperazione territoriale, che già dal 2007 è assunto a vero e proprio ed autonomo obiettivo della politica di coesione, e che dovrebbe essere considerato obiettivo principale e prioritario di tutte le attività progettuali. Se così fosse, cadrebbe la necessità di questa norma in quanto tutte le attività progettuali sono di fatto finalizzate all'obiettivo principale cooperazione, non già allo sviluppo regionale come gli aiuti di stato a finalità regionale.</p> <p>Ciò premesso, qualora si ritenga mantenere la norma, si segnala che la dizione “eligible costs” rischia di ingenerare confusione tra la nozione di spesa ammissibile ai fini delle</p>

	<p>regole degli aiuti di Stato e spese ammissibili ai fini delle regole sui Fondi Strutturali.</p> <p>Cfr. scheda sulla cooperazione territoriale.</p>
<p>13. With the exception of aid granted in favour of large investment projects, the maximum aid intensity established in the relevant regional aid map may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.</p>	
<p>14. The aid beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support. However, where the maximum aid intensity exceeds 75% because it is increased in accordance with paragraph 13 of this Article, the financial contribution of the beneficiary shall be reduced accordingly.</p>	
<p style="text-align: center;"><i>Article 16</i> Regional operating aid</p>	
<p>1. Regional operating aid schemes in outermost regions and sparsely populated areas shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.</p>	
<p>2. The regional operating aid schemes shall compensate for:</p>	
<p>(a) the transport costs of goods which have been produced in areas eligible for operating aid;</p>	

(b) additional costs other than transport costs in an outermost region.	
<p>The beneficiaries of compensation for the transport costs of goods which have been produced in areas eligible for operating aid shall be undertakings established in those areas. The aid shall be calculated on the basis of a fixed sum per tonne-kilometre or TEU²⁰-kilometre or per other relevant unit. Each fixed sum shall be established by reference to a standard scale of transport costs according to the means of transport or the type of goods, or a combination of both. Each standard scale of transport costs shall be established ex ante on the basis of the journey from the point of origin to the point of destination within the Member State concerned using the means of transport or combination of means of transport which results in the lowest cost for the beneficiaries. The selection of the means of transport or combination of means of transport used for the standard scale of transport costs shall favour the means of transport which result in lower external costs to the environment.</p>	
<p>The beneficiaries of compensation for additional costs other than transport costs in an outermost region shall be undertakings established in these regions. The annual aid amount per beneficiary shall not exceed the lowest of the following amounts:</p>	
<ul style="list-style-type: none"> • 10% of the annual sales revenues incurred by the beneficiary in the outermost region concerned; 	
<ul style="list-style-type: none"> • 10% of the annual net turnover of the beneficiary incurred by the beneficiary in the outermost region concerned. 	
<p>3. The eligible costs shall be the following:</p>	
<p>(a) the transport costs for:</p>	

²⁰ Twenty-foot equivalent unit (TEU).

<ul style="list-style-type: none"> the transport of finished goods produced in an eligible area, from their point of origin in that eligible area to the point of destination in another region of the Member State concerned or in another Member State; 	
<ul style="list-style-type: none"> the transport of raw materials or intermediate products used in the production of the goods, from their point of origin in another region of the Member State concerned or in another Member State or in a third country to their point of destination in an eligible area; 	
<ul style="list-style-type: none"> in the outermost regions only, the transport of raw materials or intermediate products produced in the outermost region concerned from their place of production to their place of final processing in the region concerned; 	
<p>(b) additional production and operating costs, other than transport costs, incurred by beneficiaries established in the outermost regions as a direct effect of one or several of the permanent handicaps referred to in Article 349 of the Treaty.</p>	
<p>4. The aid intensity shall not exceed 100% of the eligible costs.</p>	

SECTION 2 – AID FOR SMES

Article 17

SME investment aid

<p>1. SME investment aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.</p>	
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2. The eligible costs shall be the following:	
(a) the costs of investment in tangible and intangible assets; or	
(b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years.	
3. In order to be considered an eligible cost for the purposes of this Regulation, an investment shall consist of the following:	
(a) an investment in tangible and/or intangible assets relating to the setting-up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or	
(b) the acquisition of the capital assets directly linked to an establishment, where the establishment has closed or would have closed had it not been purchased, and the assets are bought by an independent investor. The transaction shall take place under market conditions.	
In the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought by an independent investor shall be waived. The sole acquisition of the shares of an undertaking shall not constitute investment.	

4.	In order to be considered an eligible cost for the purposes of this Regulation, intangible assets shall fulfil the following conditions:	
	(a) they must be used exclusively in the undertaking receiving the aid; and	
	(b) they must be regarded as amortizable assets; and	
	(c) they must be purchased from third parties at arms' length; or	
	(d) they must be included in the assets of the undertaking for at least three years;	
5.	In order to be considered an eligible cost for the purposes of this Regulation, employment directly created by an investment project shall fulfil the following conditions:	
	(a) employment shall be created within three years of completion of the investment;	
	(b) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months;	
	(c) the employment created shall be maintained during a minimum period of three years from the date the post was first filled.	
6.	The aid intensity shall not exceed:	
	(a) 20% of the eligible costs in the case of small enterprises;	
	(b) 10% of the eligible costs in the case of medium-sized enterprises.	

<p style="text-align: center;"><i>Article 18</i> <i>Aid for cooperation costs linked to ETC projects</i></p>	<p>Cfr. scheda sulla cooperazione territoriale. Si chiede di subordinare l'entrata in vigore di tale articolo alla approvazione da parte della Commissione di linee guida operative, chiare e condivise tra DG Regio e DG Comp, sulle concrete modalità di gestione degli aiuti di Stato nei Programmi CTE. Si ritiene infatti che non sussista ad oggi sufficiente prassi ed esperienza decisionale nel settore tale da giustificare l'introduzione di un'esenzione nuova.</p>
<p>1. Aid for cooperation costs incurred by SMEs undertakings participating in the European Territorial Cooperation projects covered by Regulation [COM(2011)611 ERDF/ETC] shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	<p>Cfr. osservazioni al considerando (44).</p>
<p>2. The following costs shall be eligible:</p>	
<p>(a) costs for organisational cooperation;</p>	<p>Si chiede di chiarire, attraverso esemplificazioni, cosa si deve includere nella categoria dei "costi organizzativi".</p>
<p>(b) costs of advisory and support services linked to cooperation and delivered by outside consultants and service providers;</p>	
<p>(c) travel expenses, costs of materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the project.</p>	<p>Si ritiene ingiustificato limitare la copertura delle spese per ammortamento delle attrezzature o altro tipo di bene acquisito o utilizzato anche se non esclusivamente dedicato al progetto, dal momento che è sufficiente dimostrare in quale quota parte (con metodo razionale e noto) viene imputato al costo del progetto di CTE.</p>
<p>The services referred to in paragraph 2(b) above shall not be a continuous or periodic activity nor relate to the undertaking's usual</p>	

operating costs, such as routine tax consultancy services, regular legal services or advertising.	
3. The aid amount shall not exceed 50% 75% of the eligible costs.	Al fine della semplificazione procedurale e della massima coerenza tra politica di coesione e politica di concorrenza, si propone di allineare la percentuale di aiuto alla tasso di cofinanziamento FESR dei programmi CTE – che ad oggi arriva fino al 75% dell’importo eleggibile (cfr. articolo 110 comma 3 bozza di Regolamento (COM) 2011 n. 615/2 del 14.03.2012)
<i>Article 19 SMEs' access to finance: risk finance aid</i>	
1. Risk finance aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.	
2. The risk finance measure may take the form of:	
(a) equity or quasi-equity investments made in financial intermediaries providing risk finance directly or indirectly to eligible SMEs; or	
(b) guarantees for investors or financial intermediaries to cover losses from risk finance provided to eligible SMEs; or	
(c) loans to financial intermediaries providing risk finance to eligible SMEs; or	
(d) fiscal incentives to independent private investors that are natural persons providing risk finance to eligible SMEs.	

<p>3. The risk finance measure shall be open to all types of financial intermediaries fulfilling predefined criteria objectively justified by the nature of the investment and shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. This condition shall not apply to entities entrusted by a Member State with implementing the risk finance measure.</p>	
<p>4. The risk finance measure shall target SMEs that at the time of the initial risk finance provision are unlisted and fulfill one of the following eligibility criteria:</p>	
<p>(a) have been operating in any market for less than [5] years following their first commercial sale; or</p>	
<p>(b) have achieved, since their registration, an average annual turnover not exceeding 10% of the total funding provided under the risk finance measure; or</p>	
<p>(c) have sought support under the risk finance measure with a view to entering a new product market and discontinuing their previous commercial activities on the basis of a business plan setting the terms and conditions of such a transition.</p>	

5.	The risk finance measure may also support follow-on investments made after the 5-year period mentioned in point (a) of paragraph 4.	
6.	The risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least [50]% of each investment round into the eligible SMEs.	
7.	For equity instruments falling under paragraph 2(a) of this Article, no more than 30% of the fund's aggregate capital contributions and uncalled committed capital shall be used for purposes other than the provision of risk finance to the eligible SMEs.	
8.	The provision of risk finance to the eligible SMEs may take the form of equity, quasi-equity investments, risk finance loans, or a mix thereof.	
9.	The total amount of risk finance referred to in paragraph 8 of this Article shall not exceed EUR [10] million per eligible SME.	
10.	The risk finance measure shall leverage additional finance from private independent investors at the level of the financial intermediaries or the eligible SMEs, so as to achieve an aggregate amount reaching the following minimum thresholds:	
	(a) [10%] of the risk finance provided to the eligible SMEs prior to their first commercial sale on any market;	
	(b) [40%] of the risk finance provided to the eligible SMEs referred to in paragraph 4 of this Article;	

<p>(c) [60%] of the risk finance for follow-on investment after the 5-year period mentioned in paragraph 4(a) of this Article.</p>	
<p>11. The risk finance measure shall fulfill the following conditions:</p>	
<p>(a) financial intermediaries, investors and managers shall be selected through an open, transparent and non-discriminatory call aimed at establishing appropriate risk-reward sharing arrangements whereby asymmetric profit sharing shall be given preference over downside protection.;</p>	
<p>(b) in the case of asymmetrical loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at [20%] of its total investment;</p>	
<p>(c) in the case of guarantees falling under point (b) paragraph 2, the guarantee rate shall be limited to [50%] and total losses assumed by a Member State shall be capped at [20%] of the underlying guaranteed portfolio.</p>	
<p>Point (a) shall not apply to entities entrusted by a Member State with implementing the risk finance measure.</p>	
<p>12. For risk finance measures involving financial intermediaries, the following conditions shall be fulfilled in order to ensure profit-driven financing decisions:</p>	
<p>(a) the financial intermediary shall be established according to the applicable laws and a due diligence process shall take place to ensure a commercially</p>	

<p>sound investment strategy, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of its portfolio of investments; and</p>	
<p>(b) risk finance provision to the eligible SMEs shall be based on a viable business plan, containing details of product, sales and profitability development, establishing <i>ex-ante</i> financial viability; and</p>	
<p>(c) a clear and realistic exit strategy shall exist for each investment.</p>	
<p>13. Financial intermediaries shall be managed on a commercial basis. This is considered to be the case when the following conditions are fulfilled:</p>	
<p>(a) the manager must be independent, professional and obliged by law or contract to act with the diligence of a professional manager and in good faith; and</p>	
<p>(b) the manager's remuneration shall conform to market practices; and</p>	
<p>(c) the manager shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources on the same risk conditions as the public investor;and</p>	
<p>(d) there shall be an agreement between the manager and investors, setting out the investment strategy, criteria and the proposed timing of investments; and</p>	

<p>(e) private investors shall be represented in the governance bodies of the investment intermediary in proportion to their participation, but shall not be involved in the day-to-day financing decisions.</p>	
<p>The condition laid down in point (b) shall be presumed to be met when the manager is selected through an open, transparent and non-discriminatory competitive call, based on objective criteria linked to experience, expertise and operational and financial capacity.</p>	
<p>14. A risk finance measure providing guarantee and loan instruments falling under paragraph 2(b) and (c) of this Article shall fulfill the following conditions:</p>	
<p>(a) the financial intermediary shall be able to demonstrate on the basis of its previous 3-year financial statements that the loan portfolio supported under the risk finance measure includes a significant number of SMEs which, in the light of its internal rating criteria, would not have been financed without the measure;</p>	
<p>(b) the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9.</p>	
<p style="text-align: center;"><i>Article 20</i> <i>SMEs' access to finance: aid for start-ups</i></p>	
<p>1. Start-up aid schemes shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in</p>	

<p>this Article and in Chapter I are fulfilled.</p>	
<p>2. Eligible undertakings shall be unlisted enterprises up to five years following their registration, which have not yet distributed profits and have not been formed through a merger and which are:</p>	
<p>(a) small enterprises; or</p>	
<p>(b) small and innovative enterprises, within the meaning of this Regulation.</p>	
<p>3. Start-up aid shall take the form of:</p>	
<p>(a) loans with interest rates, which are not conform with market conditions, up to five years duration and up to a maximum nominal amount of EUR [2] million, or EUR [3] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR [4] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty;</p>	
<p>(b) guarantees with premiums which are not conform with market conditions, up to five years duration and up to maximum EUR [3] million nominal amount, or EUR [4.5] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR [6] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty;</p>	
<p>(c) grants, interests rate and guarantee fee reduction up to</p>	

<p>EUR [0.4] million gross grant equivalent or EUR [0.6] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR [0.8] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty.</p>	
<p>4. For small and innovative enterprises, the maximum amounts set out in paragraph 3 may be doubled.</p>	
<p>5. A beneficiary may receive the aid only once during the period in which it qualifies as a start-up.</p>	
<p><i>Article 21</i> <i>Aid to alternative trading platforms specialised in SMEs</i></p>	
<p>1. Aid in favour of alternative trading platforms specialised in SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	

<p>2. Where the platform operator is an SME, the aid measure may take the form of start-up aid to the platform operator, in which case the conditions laid down in Article 20 shall apply.</p>	
<p>3. The aid measure may take the form of fiscal incentives to independent private investors investing through the platform which are natural persons in respect of their risk finance investments into SMEs through an alternative trading platform.</p>	
<p><i>Article 22</i> <i>Aid for scouting costs</i></p>	
<p>1. Aid covering part of scouting costs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	
<p>2. The eligible costs shall be the costs of scouting or initial screening prior to formal due diligence undertaken by professional private fund managers or investors to identify target undertakings prior to the due diligence phase</p>	
<p>3. Aid may take the form of a grant.</p>	
<p>4. The aid intensity shall not exceed [50]% of the eligible costs.</p>	

SECTION 3 – AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION

<p style="text-align: center;"><i>Article 23</i> <i>Aid for research and development projects</i></p>	
<p>1. Aid for research and development projects shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.</p>	
<p>2. The aided part of the research and development project shall completely fall within one or more of the following categories:</p>	
<p>(a) fundamental research;</p>	
<p>(b) industrial research;</p>	
<p>(c) experimental development;</p>	
<p>(d) feasibility studies.</p>	
<p>3. The eligible costs shall be allocated to a specific category of research and development and shall be the following:</p>	
<p>(a) personnel costs;</p>	
<p>(b) costs of instruments, equipment, buildings and land to the extent and for the period used for the research and development project;</p>	
<p>(c) cost of contractual research, knowledge and patents bought or licensed from outside sources at arm's length, as well as costs of consultancy and equivalent services used exclusively for the research activity;</p>	

<p>(d) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the research and development project;</p>	
<p>Where aided projects result in a commercially usable prototype or pilot, the net revenues from the first five years of commercial use shall be deducted from the eligible costs ex ante or ex post.</p>	
<p>4. The eligible costs for feasibility studies shall be the costs of the study.</p>	
<p>5. The aid intensity for each beneficiary shall not exceed:</p>	
<p>(a) 100% of the eligible costs for fundamental research;</p>	
<p>(b) 50% of the eligible costs for industrial research;</p>	
<p>(c) 25% of the eligible costs for experimental development;</p>	
<p>(d) 50% of the eligible costs for feasibility studies.</p>	
<p>6. 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:</p>	
<p>(a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;</p>	
<p>(b) by 15 percentage points if:</p>	
<p>(i) the project involves effective collaboration and the project involves at least one SME or is carried out in at least two Member States and no single undertaking bears more than 70% of the eligible costs, or</p>	

<p>at least one research and knowledge-dissemination organisation is involved, which bears solely or together with other such organisations at least 10% of the eligible costs and has the right to publish the own research results; or</p>	
<p>(ii) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software;</p>	
<p>(c) by [5] percentage points for investments in commercially usable prototypes and pilot projects by large enterprises established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, to the extent that the eligible costs under the present Article overlap with the costs eligible under Article 15 [Regional investment aid] and up to the lowest aid intensity authorised in assisted areas fulfilling the conditions of Article 107(3)(a).</p>	
<p><i>Article 24</i> <i>Investment aid for research infrastructures</i></p>	
<p>1. Aid for the construction or upgrade of research infrastructures that perform economic activities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.</p>	
<p>2. When a research infrastructure pursues both economic and non-economic activities, their respective financing, costs and revenues must be accounted for separately on the basis of consistently applied and</p>	

objectively justifiable cost accounting principles.	
3. The price charged for the operation or use of the infrastructure shall correspond to the market price.	
4. Access to the infrastructure shall be granted on a transparent and non-discriminatory basis. By way of derogation from this principle, undertakings which have financed at least 50% the investment costs of the research infrastructure may have preferential access to such infrastructure, provided that such access is granted at market price, is limited in time and that the preferential-access conditions are made publicly available.	
5. The eligible costs shall be the investment costs in intangible and tangible assets.	
6. The aid intensity shall not exceed [25]% of the eligible costs.	
It may be increased to [35]% of the eligible costs for infrastructures located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and to [30]% of the eligible costs for infrastructures located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.	
<i>Article 25</i> <i>Innovation aid for SMEs</i>	
1. Innovation aid for SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled :	

2.	The following costs shall be eligible:
(a)	costs for obtaining and validating patents and other industrial property rights;
(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;
(d)	costs for process or organisational innovation;
(e)	costs for the participation in a fair or exhibition presenting new or significantly improved products and/or services.
3.	The aid intensity shall not exceed 50% of the eligible costs.
<p><i>Article 26</i> <i>Aid for research and development in the fishery and aquaculture sector</i></p>	
1.	Aid for research and development in the fishery and aquaculture sector shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I of this Regulation are fulfilled.

<p>2. The research and development project shall be of interest to all operators in the particular sector or sub-sector concerned.</p>	
<p>3. Information that the research and development will be carried out and the goal of such research and development, shall be published on the internet, prior to the commencement of the research and development. An approximate date when the results are expected and the place where they will be published on the internet, as well as a statement that the result will be available at no cost, must be included.</p>	
<p>The results of the research and development shall be made available on internet, for a period of at least 5 years. They shall be published no later than any information which may be given to members of any particular organisation.</p>	
<p>4. The eligible costs shall be those provided in Article 23(3).</p>	
<p>5. The aid intensity shall not exceed 100% of the eligible costs.</p>	

SECTION 4- TRAINING AID

<p><i>Article 27</i> Training aid</p>	
<p>1. Training aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.</p>	

<p>2. Aid shall not be granted where training ensures that companies comply with national mandatory standards on training.</p>	
<p>3. The eligible costs shall be:</p>	<p>Al fine di non disincentivare le imprese dall'investire nella formazione dei lavoratori, essenziale sia per la coesione sociale che per la crescita individuata nella strategia di EU 2020, è importante mantenere invariate le voci di costo ammissibili fino ad oggi utilizzate (spese generali indirette e costi di personale per i partecipanti al progetto di formazione, ex art.39.4 lett.f))</p>
<p>(a) trainers' and trainees' personnel costs, for the hours during which the trainers participate in the training;</p>	<p>Si ritiene penalizzante non considerare più tra le voci ammissibili le attività propedeutiche alla realizzazione della formazione che comunque hanno un costo.</p>
<p>(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;</p>	
<p>(c) advisory service costs linked to the training project and general indirect costs (administrative costs, rent, overheads);</p>	
<p>4. 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:</p>	
<p>(a) by 10 percentage points if the training is given to disabled or disadvantaged workers or to the staff participating in training, retraining or relocating programs undertaken by firms in difficulty within approved</p>	<p>Cfr. considerando (14)</p>

	restructuring plans;	
	(b) by 10 percentage points if the aid is awarded to medium-sized enterprises and by 20 percentage points if the aid is awarded to small enterprises;	
5.	Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 100% of the eligible costs provided that the following conditions are met:	
	(a) the trainee is not an active member of the crew but is supernumerary on board; and	
	(b) the training is carried out on board of ships entered in Union registers.	

SECTION 5 - AID FOR DISADVANTAGED AND DISABLED WORKERS

	<i>Article 28</i> Aid for the recruitment of disadvantaged workers or for the employment of disabled workers in the form of wage subsidies	
1.	Aid schemes or ad hoc aids for the recruitment of disadvantaged workers or for the employment of disabled workers shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.	

<p>2. The aid must lead to a net increase in the number of disadvantaged or disabled employees in the undertaking concerned, compared with the average over the previous twelve months.</p>	
<p>3. Paragraph 2 does not apply where the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy or expiry of a fixed term contract.</p>	<p>La previsione potrebbe avere un impatto molto restrittivo per l'impresa ai fini della verifica dell'incremento netto.</p>
<p>4. Except in the case of lawful dismissal for misconduct the disadvantaged or disabled worker shall be entitled to continuous employment for a minimum period consistent with the applicable national legislation or any collective agreements governing employment contracts.</p>	
<p>5. If the period of employment is shorter than 12 months, the aid shall be reduced pro rata accordingly.</p>	
<p>6. Eligible costs shall be:</p>	
<p>(a) the wage costs over a maximum period of 12 months following recruitment of a disadvantaged worker;</p>	
<p>(b) the wage costs over a maximum period of 24 months following recruitment of a severely disadvantaged worker;</p>	
<p>(c) the wage costs over any given period during which the disabled worker is employed.</p>	

7.	The aid intensity shall not exceed:	
	(a) 50% of the eligible costs, as regards aid for the recruitment of disadvantaged workers;	
	(b) 75% of the eligible costs, as regards aid for the employment of disabled workers.	
	<i>Article 29</i> <i>Aid for compensating the additional costs of employing disabled workers</i>	Si chiede che la Commissione valuti l'opportunità di considerare che le compensazioni dei sovraccosti per l'occupazione dei lavoratori disabili non siano considerate aiuti di Stato in quanto non generano alcun tipo di vantaggio economico per l'impresa.
1.	Aid for compensating the additional costs of employing disabled workers shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.	
2.	The eligible costs shall be the following:	
	(a) costs of adapting the premises;	
	(b) costs of employing staff solely for time spent on the assistance of the disabled workers;	
	(c) costs of adapting or acquiring equipment, or acquiring and validating software for use by disabled workers, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not disabled;	

(d) where the beneficiary provides sheltered employment, the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result directly from the employment of disabled workers.	
3. The aid intensity shall not exceed 100% of the eligible costs.	

SECTION 6 – AID FOR ENVIRONMENTAL PROTECTION

Alla luce dell'importanza delle politiche della qualità dell'aria per molte Regioni Europee ed a tutela della salute dei cittadini, si ritiene opportuno che le norme della sezione 6 prevedano un trattamento specifico e più favorevole per le politiche per la qualità dell'aria. La questione molto sentita per le politiche a tutela della qualità dell'aria vale anche per altre istanze ambientali ove ricorrono motivazioni oggettive/scientifiche o comunque comprovati insufficienze dello Stato membro nel raggiungere obiettivi di tutela integrata di un determinato bene-vita sotteso alla tutela dell'ambiente/salute umana richiedano un intervento pubblico anche finanziario immediato e mirato secondo metodologie burocraticamente snelle ma concordate a livello europeo anche dal punto di vista della tutela della concorrenza e degli orientamenti in materia di aiuti di stato (stabilendo intensità, costi ammissibili, ... comuni a tutti gli Stati membri in caso di intervento pubblico)

A titolo di esempio della necessità di tale ampliamento, si cita l'esperienza della Regione Lombardia che, per poter dare attuazione alle misure di aiuti di Stato gestite dalla U.O. Qualità dell'Aria, Emissioni Industriali e Rumore nel triennio 2009-2011, ha dovuto necessariamente ricorrere alla base giuridica degli aiuti anticrisi (Quadro di riferimento temporaneo comunitario per le misure di aiuto di Stato a sostegno dell'accesso al finanziamento nell'attuale situazione di crisi finanziaria ed economica, Comunicazione CE 2009/C 83/01). Tali misure non sarebbero state realizzabili, o non lo sarebbero state con la stessa efficacia, adottando la base giuridica fissata dal RGEC. Nonostante il sistema produttivo delle imprese del bacino padano tenda ad essere molto efficiente dal punto di vista emissivo, dovuto alla riduzione delle emissioni specifiche, sia in termini pro PIL che in termini pro capite confrontati con quelli dell'UE27, non si è ancora raggiunta la piena conformità ai limiti vigenti stabiliti dalla Direttiva CE 50/2008.

In considerazione dei notevoli sforzi sin qui compiuti, si ritengono necessari interventi straordinari che possano fronteggiare problematiche di elevata complessità ambientale, economica e giuridica, integrata e non localizzata solo in un determinato territorio e ove, come in altre Regioni d'Italia, sono aperti contenziosi e pre-contenziosi UE all'interno dei quali si richiedono alle PPAA di valutare misure efficaci e sufficienti per rientrare da limiti emissivi.

La proposta che qui si sottopone all'attenzione è quella di passare da un'ottica di divieti contro le imprese (e contro alcune libertà fondamentali quale la libera circolazione di persone e prodotti e dimostratisi alla prova dei fatti non sufficienti da soli) ad un'ottica di maggiori incentivi concordati e limitati, ma diretti allo scopo e al perseguimento

dell'obiettivo della qualità dell'aria, che possano responsabilizzare direttamente le imprese agli obiettivi comunitari della crescita sostenibile all'interno di un quadro condiviso di tutela ambientale e, in modo temperato, anche della concorrenza (AS).

Infatti solo in determinati casi (scientificamente o giuridicamente provati a livello UE) dovrebbe essere possibile muoversi in esenzione per la PA anche al di là del superamento di standard futuri europei o comunque, ove essi fossero mancanti, al di là dell'introduzione di nuovi standard magari potenzialmente lesivi di determinate libertà, incentivando le imprese alla conversione verso mezzi di produzione ambientalmente orientati in modo sostenibile dal punto di vista emissivo.(cfr. scheda allegata)

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<p style="text-align: center;"><i>Article 30</i></p> <p><i>Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards</i></p>	<p><i>Si chiede di valutare, per taluni ambiti di applicazione, la possibilità di consentire anche agli SM, o alle Regioni, che per ragioni soggettive e oggettive non ottemperano agli standards UE, di potersi avvalere dello strumento degli Aiuti di Stato in esenzione a favore del sistema delle imprese insediate nel proprio territorio. Per esempio, nell'ambito delle politiche per la qualità dell'aria si corre il rischio di portare avanti anche nel nuovo RGEC il paradosso di fornire uno strumento di Aiuto, semplice e vantaggioso, a coloro che già riescono a rispettare le disposizioni normative comunitarie, escludendo coloro che invece non sono nelle condizioni, comprovate e dimostrabili, di poterle rispettare. Il caso delle Regioni del Bacino Padano è particolarmente eloquente: i dati statistici a disposizione dimostrano che, nonostante le Regioni non rispettino i limiti di qualità dell'aria fissati dalla normativa comunitaria (Direttiva CE 50/2008), il sistema produttivo è tra i più "virtuosi" in termini emissivi nell'ambito dell'UE sia in termini pro PIL che in termini procapite.(AS).</i></p>
<p>1. Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	
<p>2. The investment shall fulfil one of the following conditions:</p>	
<p>(a) it shall enable the beneficiary</p>	

<p>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;</p>	
<p>(b) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.</p>	
<p>3. Aid may not be granted where investments are to ensure that companies comply with Unions standards already adopted and not yet in force.</p>	
<p>4. By derogation from paragraph 3, aid may be granted for</p>	
<ul style="list-style-type: none"> • the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted EU standards, provided that the acquisition occurs before these standards enter into force and that, once mandatory, they do not apply retroactively to vehicles already purchased 	
<ul style="list-style-type: none"> • for retrofitting operations of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the EU standards were not yet in force at the date of entry into operation of these vehicles and that, once mandatory, they do not apply retroactively to these vehicles. 	
<p>5. The eligible costs shall be the investment costs necessary to go beyond the applicable Union standards. The costs not directly linked to the achievement of the higher level of environmental protection are not eligible. In particular, the eligible costs shall be</p>	

the following:	
(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) where the costs of investing in environmental protection can be identified by reference to a similar, less environmental friendly investment, this environmental protection-related cost shall constitute the eligible costs.	Tale disposizione pare di difficile applicabilità: come determinare, in un mercato con una pluralità di offerte di prodotti e/o servizi, il valore economico dell'investimento alternativo idoneo ad essere confrontato con il costo dell'investimento che garantisce una tutela ambientale superiore? (AS)
(c) in all other cases, the total investment costs to go beyond the applicable Union standards or to achieve a higher level of environmental protection in the absence of Union standards. The eligible costs shall be the costs of investment in tangible assets and/or in intangible assets.	Si propone di evidenziare con chiarezza per il caso di intervento secondo standard di protezione ambientale introdotti dallo Stato membro in assenza di standard UE che l'interpretazione sia quella di considerare l'intensità dell'aiuto applicata sull'intero costo di investimento materiale o immateriale (superando l'ottica del costo differenziale)
6. The aid intensity shall	
• not exceed [x]% of the eligible costs if the eligible costs are calculated on the basis of point 5a or 5b.	
• not exceed [x]% of the eligible cost if the eligible costs are calculated on the basis of point 5c.	
The aid intensity may be increased by [x] percentage points for aid awarded to medium sized enterprises and [x] percentage points for aid awarded to small enterprises.	
[The aid intensity may be increased by [5] percentage points for aid awarded to large enterprises established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, to the extent that the eligible costs under the present Article overlap with	

<p>the costs eligible under Article 15 [Regional investment aid] and up to the lowest aid intensity applicable in assisted areas fulfilling the conditions of Article 107(3)(a).]</p>	
<p>7. Aid for investments relating to the management of waste of other undertakings shall not be exempt under this Article.</p>	
<p style="text-align: center;"><i>Article 31</i> <i>Investment aid for early adaptation to future Union standards for SMEs</i></p>	
<p>1. Aid allowing SMEs to comply with new Union standards which increase the level of environmental protection and are not yet in force shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	
<p>2. The Union standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.</p>	
<p>3. The eligible costs shall be the investment costs necessary to go beyond the applicable Union standards. The costs not directly linked to the achievement of the higher level of environmental protection shall not be eligible. In particular, the eligible costs shall be the following:</p>	
<p>(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;</p>	

<p>(b) where the costs of investing in environmental protection can be identified by reference to a similar, less environmental friendly investment, this environmental protection-related cost shall constitute the eligible costs.</p>	
<p>(c) in all other cases, the total investment costs to early adapt to Union standards The eligible costs shall be the costs of investment in tangible assets and/or in intangible assets.</p>	
<p>4. The aid intensity shall not exceed</p>	
<ul style="list-style-type: none"> • [x]% of the eligible costs for small enterprises and [x]% of the eligible costs for medium-sized enterprises if the implementation and finalisation take place more than three years before the date of entry into force of the standard and if the eligible costs are calculated on the basis of point 3a or 3b; 	
<ul style="list-style-type: none"> • [x]% of the eligible costs for small enterprises if the implementation and finalisation take place between one and three years before the date of entry into force of the standard and if the eligible costs are calculated on the basis of point 3a or 3b ; 	
<ul style="list-style-type: none"> • [x]% of the eligible costs for small enterprises and [x]% of the eligible costs for medium-sized enterprises if the implementation and finalisation take place more than three years before the date of entry into force of the standard and if the eligible costs are calculated on the basis of point 3c; 	
<ul style="list-style-type: none"> • [x]% of the eligible costs for small enterprises if the implementation and finalisation take place between one and three years before the date of entry into force of the standard if the eligible costs are calculated on the basis of point 3c. 	

<p>[The aid intensity may be increased by [5] percentage points for aid awarded to large enterprises established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, to the extent that the eligible costs under the present Article overlap with the costs eligible under Article 15 [Regional investment aid] and up to the lowest aid intensity applicable in assisted areas fulfilling the conditions of Article 107(3)(a).]</p>	
<p style="text-align: center;"><i>Article 32</i> <i>Investment aid for energy saving measures</i></p>	
<p>1. Investment aid enabling undertakings to achieve energy savings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	
<p>2. Aid may not be granted where improvements are to ensure that companies comply with Union standards already adopted.</p>	
<p>3. The eligible costs shall be the investment costs necessary to achieve the higher level of environmental protection. The costs not directly linked to the achievement of the higher level of environmental protection shall not be eligible. In particular, the eligible costs shall be the following:</p>	
<p>(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;</p>	
<p>(b) where the costs of investing in environmental protection can</p>	

<p>be identified by reference to a similar, less environmental friendly investment, this environmental protection-related cost shall constitute the eligible costs.</p>	
<p>(c) in all other cases, the total investment costs to achieve a higher level of environmental protection. The eligible costs shall be the costs of investment in tangible assets and/or in intangible assets.</p>	
<p>4. The aid intensity shall</p>	
<ul style="list-style-type: none"> • not exceed [x]% of the eligible costs if the eligible costs are calculated on the basis of point 3a or 3b. 	
<ul style="list-style-type: none"> • not exceed [x]% of the eligible cost if the eligible costs are calculated on the basis of point 3c. 	
<p>The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.</p>	
<p>[The aid intensity may be increased by [5] percentage points for aid awarded to large enterprises established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, to the extent that the eligible costs under the present Article overlap with the costs eligible under Article 15 [Regional investment aid] and up to the lowest aid intensity authorised in assisted areas fulfilling the conditions of Article 107(3)(a).]</p>	

<p style="text-align: center;"><i>Article 33</i> Investment aid for high-efficiency cogeneration</p>	
<p>1. Investment aid for high-efficiency cogeneration shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	
<p>2. A new cogeneration unit shall overall make primary energy savings compared to separate production as provided for by Directive 2012/27/EU²¹. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.</p>	
<p>3. The investment aid shall be granted to newly installed capacities not exceeding [x] MW.</p>	
<p>4. The eligible costs shall be investment costs for the additional equipment needed for the installation to operate as a high-efficiency cogeneration installation.</p>	
<p>5. The aid intensity shall not exceed [x]% of the eligible costs. The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.</p>	
<p>OPTION: <i>The aid intensity may be increased to [x]% of the eligible costs for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty</i></p>	

²¹ OJ L 315, 14.11.2012, p. 1.

<i>and to [x]% of the eligible costs for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.</i>	
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<p style="text-align: center;"><i>Article 34</i> <i>Investment aid for the promotion of energy from renewable sources</i></p>	
<p>1. Aid for the promotion of energy from renewable energy sources shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	
<p>2. Aid for the production of biofuels shall be exempt from the notification requirement only to the extent that the investments are used exclusively for the production of sustainable biofuels.</p>	
<p>3. The aid must comply either with paragraphs 4 to 7, or alternatively with paragraph 8.</p>	
<p>4. The investment aid shall be granted to newly installed capacities not exceeding [x]MW.</p>	<p>Si chiede alla Commissione chiarimenti su che cosa deve intendersi per “introdotte di recente” (newly)</p>
<p>5. The eligible costs shall be investment costs necessary to achieve the higher level of environmental protection. The costs not directly linked to the achievement of the higher level of environmental protection are not eligible.</p>	
<p>6. If electricity is supplied to the grid, the producers or where relevant aggregator shall be subject to standard obligations regarding network connection and network connection charges and shall bear responsibility, in financial terms, for all deviations (imbalances) between their scheduled and actual generation within a given imbalance settlement period. Subject to commercial</p>	

<p>arrangements this responsibility can be outsourced to other balance responsible parties.</p>	
<p>7. The aid intensity shall not exceed [x]% of the eligible costs.</p>	
<p>The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.</p>	
<p><i>OPTION: The aid intensity may be increased to [x]% of the eligible costs for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and to [x]% of the eligible costs for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.</i></p>	
<p>8. [The aid shall be granted in a genuinely competitive, technology-neutral bidding process on the basis of clear, transparent and non-discriminatory criteria, effectively ensuring that the aid is limited to the minimum necessary for delivering newly installed renewable energy. Such a bidding process shall comply with the following requirements:</p>	
<p>(i) It shall provide for the participation of a sufficient number of undertakings.</p>	
<p>(ii) The budget related to the bidding process shall be a binding constraint in the sense that not all bidders can receive aid.</p>	
<p>(iii) The aid shall be granted on the basis of the initial bid submitted by the bidder, thus excluding subsequent negotiations.</p>	
<p>(iv) The bidding process shall be open to bidders from all EEA countries. Member States shall ensure that a cooperation mechanism is in place with the countries in which bidders may be located. Member States may require that the bidder ensures that it is able to deliver the electricity to the Member State granting the aid.</p>	

<p>(v) A cap may be imposed for each stage of the auction process to ensure that the bidding process is genuinely competitive in each stage. All technologies shall be able to make bids within the established cap and at each stage of the process while ensuring the cheapest technology cannot be overcompensated.</p>	
<p>OPTION 1</p>	<p><i>Si chiedono alla Commissione chiarimenti sul funzionamento del meccanismo del Feed in Premium, soprattutto con riferimento alle modalità di calcolo dell'ESL e del cumulo, specialmente in considerazione del fatto che l'analogo meccanismo che in Italia è costituito dal cd conto energia non configura aiuto di Stato, in quanto non selettivo.</i></p>
<p>(vi) The aid shall be granted in the form of a Feed-in Premium.</p>	
<p>(vii) The bidders shall be made to bear standard balancing responsibilities and be subject to standard obligations regarding network connection and network connection charges in the Member State where electricity is produced.</p>	
<p>OPTION 2</p>	
<p><i>(vi) The aid shall be granted in the form of a Feed-in Premium for power generated, and sold on the electricity market.</i></p>	
<p><i>(vii) The bidders shall be made to bear the responsibility, in financial terms, for all deviations (imbalances) between their scheduled and actual generation within a given imbalance settlement period. Subject to commercial arrangements this responsibility can be outsourced to other balance responsible parties and shall be subject to standard obligations regarding network connection and network connection charges in the Member State where electricity is produced. Renewable producers shall not be exempted from obligations offering balancing services to the Transmission System Operators, where technologically possible.]</i></p>	

<p style="text-align: center;"><i>Article 35</i> <i>Aid in the form of reductions in environmental taxes under Directive 2003/96/EC</i></p>	
<p>1. Aid schemes in the form of reductions in environmental taxes fulfilling the conditions of Directive 2003/96/EC²² shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	
<p>2. The beneficiaries of the tax reduction shall pay at least the Union minimum tax level set by Directive 2003/96/EC.</p>	
<p>3. Tax reductions shall be granted for maximum periods of [ten] years. After such period, Member States shall re-evaluate the appropriateness of the aid measures concerned.</p>	
<p>4. This Article shall not apply to aid in the form of tax exemptions that are covered by other provisions of this Section.</p>	
<p style="text-align: center;"><i>Article 36</i> <i>Investment aid for remediation of contaminated sites</i></p>	
<p>1. Investment aid to undertakings repairing environmental damage by remediating contaminated sites shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I</p>	

²² OJ L 283, 31.10.2003, p. 51.

	are fulfilled.	
2.	The investment shall lead to an improvement of environmental protection. The environmental damage to be repaired shall cover damage to the quality of the soil or of surface water or groundwater.	
3.	Aid shall be granted only when the polluter -i.e. the person liable under the law applicable in each Member State without prejudice to the adoption of EU rules in this matter - is not identified or cannot be held legally liable for financing the remediation in accordance with the "polluter pays" principle. Where the polluter is identified and where it can be held liable, that person must finance the remediation in accordance with the "polluter pays" principle, and no State aid shall be granted.	
4.	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 rank as eligible investment in the case of the remediation of contaminated sites.	
5.	Evaluations of the increase in value of the land resulting from remediation have to be carried out by an independent expert.	
6.	The aid intensity shall not exceed [x]% of the eligible costs.	

<p style="text-align: center;"><i>Article 37</i> Investment aid for energy efficient district heating and cooling</p>	
<p>1. Investment aid for the installation of an efficient district heating and cooling system shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.</p>	
<p>2. The system satisfies the definition of efficient district heating and cooling system as set out in Article 2(41) and (42) of Directive 2012/27/EU²³.</p>	
<p>3. The eligible costs related to the generation units shall be the investment costs for the construction, expansion, refurbishment of one or more generation units which shall be an integral part of the efficient district heating and cooling system.</p>	<p>Si chiede di definire più chiaramente la separazione tra costi elegibili del sistema di generazione (comma 3) e quelli riconducibili alla rete di distribuzione (comma 7).</p>
<p>4. The aid intensity shall not exceed [x]% of the eligible costs. The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.</p>	
<p>5. In the case of the use of waste heat, where the environmental investment can be identified, the aid intensity can be increased to [x]%.</p>	
<p>6. The investment aid shall be granted to newly installed capacities not exceeding [x] MW.</p>	<p>Non si comprende la necessità di indicare una soglia massima di capacità. Si chiedono spiegazioni in merito.</p>
<p>7. The eligible costs for the distribution network shall be the total investment</p>	

²³ OJ L 315, 14.11.2012, p. 1.

costs of the network or its refurbishment.	
8. The aid intensity for the distribution network shall not exceed [x]% of the eligible costs. The aid intensity may be increased by [x] percentage points for aid awarded to small enterprises and by [x] percentage points for aid awarded to medium-sized enterprises.	Si propone di massimizzare l'intensità di aiuto riferito alla rete rispetto a quella del sistema di generazione
<i>OPTION: The aid intensity may be increased to [x]% of the eligible costs for efficient district heating and cooling systems located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and to [x]% of the eligible costs for efficient district heating and cooling systems located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.</i>	
9. No aid can be given to achieve compliance with legal standards applying to district heating and cooling systems.	
<i>Article 38 Aid for environmental studies</i>	
1. Aid for studies, including energy audits, directly linked to investments referred to in this Section shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.	
2. No aid shall be granted to large enterprises for energy audits carried out under Article 8(4) of the Energy Efficiency Directive 2012/27/EU.	
3. The eligible costs shall be the costs of the studies mentioned in paragraph 1.	

4. The aid intensity shall not exceed 50% of the eligible costs.	
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CHAPTER IV Final Provisions

<i>Article 39</i> Repeal	
Regulation (EC) No 800/2008 shall be repealed.	
Any references to the repealed Regulation shall be construed as references to this Regulation.	
<i>Article 40</i> Transitional provisions	
1. This Regulation shall apply to individual aid granted before its entry into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 11.	

<p>2. Any aid exempted from the notification requirement of Article 108(3) of the Treaty by virtue of any regulations previously in force shall be compatible with the internal market.</p>	
<p>3. Any aid not exempted from the notification requirement of Article 108(3) of the Treaty by virtue of this or other regulations previously in force shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.</p>	
<p>4. At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months, with the exception of regional aid schemes. The exemption of regional aid schemes shall expire at the date of expiry of the approved regional aid maps.</p>	
<p>5. Member State shall comply with the provisions of Article 10(2) at the latest within two years after the entry into force of this Regulation.</p>	
<p><i>Article 41</i></p>	
<p>This Regulation shall enter into force on the [twentieth] day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	
<p>It shall apply until 31 December 2020. This Regulation shall be binding in its entirety and directly applicable in all Member States.</p>	

Done at Brussels,

*For the Commission
The President*

ANNEX I Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'ad hoc aid' means aid not awarded on the basis of an aid scheme;
2. '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 [COM(2011)416] on the common organisation of the markets in fishery and aquaculture products;
3. 'aid' means any measure fulfilling all the criteria laid down in Article 107(1) of the Treaty;
4. 'aid intensity' means the aid amount expressed as a percentage of the eligible costs;
5. '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 awarded to one or several undertakings **, for an indefinite period of time and/or for an indefinite amount;** *(si chiede che la Commissione si attenga alla definizione del Regolamento 659/99, art. 1 lettera d))*
6. 'assisted areas' means areas designated in an approved regional aid map for the period 2014-2020 in application of Articles 107(3)(a) and (c) of the Treaty;
7. 'coal' means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal established by the United Nations Economic Commission for Europe¹;
8. 'date of grant 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;
9. 'disabled worker' means any person:
 - (a) recognised as disabled under national law; or
 - (b) having a recognised limitation which results from physical, mental or psychological impairment;
10. 'disadvantaged worker' means any person who:
 - (a) has not been in regular paid employment for the previous 6 months; or
 - (b) is between 15 and 24 years of age;
 - (c) has not attained an upper secondary educational or vocational qualification (ISCED 3) or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment; or
 - (d) is over the age of 50 years; or
 - (e) lives as a single adult with one or more dependents; or

¹ Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines, OJ L 336, 21.12.2010, p. 24, article 1 (a).

- (f) works in a sector or profession in a Member State where the gender imbalance is at least 25% higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
 - (g) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;
11. '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;
 12. 'fiscal successor scheme' means a fiscal scheme which constitutes an amended version of a previously existing fiscal scheme and which replaces it.
 13. 'gross grant equivalent' or 'GGE' means the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs calculated at the moment of award of the aid on the basis of the discount rate applicable at that moment in time;
 14. 'individual aid' means aid granted to a specific undertaking and includes:
 - (a) ad hoc aid; and
 - (b) awards of aid on the basis of an aid scheme;
 15. 'intangible assets' means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge;
 16. 'large enterprises' means undertakings not fulfilling the criteria laid down in Annex I;
 17. '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;
 18. 'net increase in the number of employees' means a net increase in the number of posts in the undertaking 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; **the prorogation of an expiring contract of at least [X] years and the conversion of fixed-term contracts into open-ended ones, shall be considered as a net increase in the number of employees;**
 19. '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;

20. 'repayable advance' means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project;
21. 'severely disadvantaged worker' means any person who:
- (a) has not been in regular paid employment for at least 24 months; or
 - (b) has not been in regular paid employment for at least 12 months and belongs to one of the categories (b) to (g) mentioned under the definition of 'disadvantaged worker'.
22. 'sheltered employment' means employment in an undertaking where at least 50% of workers are disabled;
23. 'small and medium-sized enterprises' or 'SMEs' means undertakings fulfilling the criteria laid down in Annex II;
24. 'start of works' means 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, **like the recruitment of staff specifically for the aided project or the purchase of land**, whichever comes first, excluding preparatory works **like preliminary feasibility studies** (*si chiede che la Commissione esemplifichi maggiormente tale categoria: le integrazioni suggerite sono contenute nelle FAQ relative al Reg. 800/2008/CE*);
25. 'tangible assets' means assets relating to land, buildings and plant, machinery and equipment;
26. 'transparent aid' means aid in respect of which it is possible to calculate precisely the gross grant equivalent ex ante without need to undertake a risk assessment;
27. 'undertaking in difficulty' means an undertaking that fulfils the following conditions:
[precise 'hard criteria' as currently set out in paragraph 10 of the Guidelines on State aid for rescuing and restructuring firms in difficulty or as set out in new guidelines on rescue and restructuring aid, taking into account the current provision of Reg. 800/2008/EC according to which "An SME which has been incorporated for less than three years shall not be considered, for the purposes of this Regulation, to be in difficulty with regard to that period unless it meets the condition set out" as hard criteria]
28. 'wage cost' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising:
- (a) the gross wage, before tax;
 - (b) the compulsory contributions, such as social security charges over a defined period of time; and
 - (c) child care and parent care costs;

DEFINITIONS FOR REGIONAL AID

29. 'areas eligible for operating aid', means an outermost region referred to in Article 349 of the Treaty or a sparsely populated area, as determined in the approved regional aid map for the Member State concerned for the period 2014-2020;
30. 'basic broadband' means networks which are asymmetric digital subscriber lines (up to ADSL2+ networks), non-enhanced cable (e.g. DOCSIS 2.0), mobile networks of third generation (UMTS) and satellite systems;
31. 'NGA networks' means fibre-based access networks (FTTx), advanced upgraded cable networks and certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber;
32. 'backhaul broadband networks' means the intermediate link between the backbone network and the access network and carries data to and from the global network;
33. 'initial investment' means:
 - an investment in tangible and intangible assets related to the setting-up of a new establishment, the extension of the capacity of an existing establishment, the diversification of the output of an establishment into products not previously produced in the establishment or a fundamental change in the overall production process of an existing establishment; or
 - an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking;
34. 'initial investment in favour of new activity' means:
 - an investment in tangible and intangible assets related to setting up of a new establishment, under the condition that the activity performed in the new establishment is not the same or a similar activity to the activity performed in an existing establishment in the same NUTS 3 region owned by the same undertaking or group of undertakings, diversification of the activity of an establishment, under the condition that the new activity is not a same or similar activity to the activity previously performed in the establishment;
 - acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not the same or a similar activity to the activity performed in the establishment prior to the acquisition;

35. 'same or a similar activity' means activities falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities²;
36. 'intangible assets' means assets acquired through a transfer of technology, such as patent rights, licences, know-how or unpatented technical knowledge and for the purposes of regional initial investment aid, they shall be amortizable assets, exclusively used in the establishment receiving the aid, purchased from parties with no legal, economic, or financial links at arm's length, which will be included in the assets of the undertaking and remain associated with the project receiving the aid for at least five years or three years in case of SMEs;
37. 'investment aid' means regional aid granted for an initial investment or an initial investment in favour of new activity;
38. '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;
39. 'large investment project' means an initial investment with eligible costs exceeding EUR 50 million, calculated at prices and exchange rates on the date of award of the aid. A large investment project shall be considered to be a single investment project when any initial investment started by the same beneficiary (at group level) in a period of three years from the date of start of works on another aided investment in the same NUTS 3 region.
40. 'means of transport' means railway transport, road freight transport, inland waterway transport, maritime transport, air transport, intermodal transport;
41. 'point of destination' means the place where the goods are unloaded;
42. 'point of origin' means the place where the goods are loaded for transport;
43. 'regional operating aid' means aid to reduce an undertaking's current expenditure that is not related to an initial investment and includes costs categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when awarding investment aid and may be based on actual costs but may be granted in the form of periodic instalments to cover expected costs (periodic lump sum payments);
44. 'scheme targeted at specific sectors of economic activity' means a scheme which covers only one or a limited number of activities within manufacturing or services.
45. 'steel sector' means all activities related to the production of one or more of the following products:
 - (a) pig iron and ferro-alloys:

² As laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1). Regulation as amended by Commission Regulation (EC) No 973/2007 of 20 August 2007 amending certain EC Regulations on specific statistical domains implementing the statistical classification of economic activities NACE Revision 2 (OJ L 216, 21.8.2007, p. 10).

- pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high-carbon ferro-manganese, not including other ferro-alloys;
- (b) crude and semi-finished products of iron, ordinary steel or special steel:
liquid steel cast or not cast into ingots, including ingots for forging semi-finished products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wide coils, with the exception of production of liquid steel for castings from small and medium-sized foundries;
- (c) hot finished products of iron, ordinary steel or special steel:
rails, sleepers, fishplates, soleplates, joists, heavy sections 80 mm and over, sheet piling, bars and sections of less than 80 mm and flats of less than 150 mm, wire rod, tube rounds and squares, hot-rolled hoop and strip (including tube strip), hot-rolled sheet (coated or uncoated), plates and sheets of 3 mm thickness and over, universal plates of 150 mm and over, with the exception of wire and wire products, bright bars and iron castings;
- (d) cold finished products:
tinplate, terneplate, blackplate, galvanized sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;
- (e) tubes:
all seamless steel tubes, welded steel tubes with a diameter of over 406.4 mm;
46. 'synthetic fibres sector' means:
- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.
47. 'tangible assets' means assets in the form of land, buildings and plant, machinery and equipment but for the purposes of regional aid in the transport sector, movable assets are not considered as eligible costs;
48. 'tourism activity' means the following activities in terms of NACE Rev. 2:
- (a) NACE 55:Accommodation;
- (b) NACE 56: Food and beverage service activities;
- (c) NACE 79: Travel agency, tour operator reservation service and related activities;
- (d) NACE 90: Creative, arts and entertainment activities;
- (e) NACE 91: Libraries, archives, museums and other cultural activities;
- (f) NACE 93: Sports activities and amusement and recreation activities;

49. 'transport costs' means the costs of transport for hire or reward actually paid by the beneficiaries per journey, comprising:
- (a) freight charges, handling costs and temporary stocking costs, in so far as these costs relate to the journey;
 - (b) insurance costs applied to the cargo;
 - (c) taxes, duties or levies applied to the cargo and, if applicable, to the deadweight, both at point of origin and point of destination;
 - (d) safety and security control costs, surcharges for increased fuel costs;

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50. 'transport' means inland transport by road, rail and waterways, air and maritime passenger and/or freight transport services for hire or reward but does not include transport infrastructure, notably airports and ports;
51. 'type of goods' means goods classified in accordance with Commission Regulation (EC) No 1304/2007 of 7 November 2007 amending Council Directive 95/64/EC, Council Regulation (EC) No 1172/98, Regulations (EC) No 91/2003 and (EC) No 1365/2006 of the European Parliament and of the Council with respect to the establishment of NST 2007 as the unique classification for transported goods in certain transport modes³;
52. 'airport infrastructure' means terminal buildings, runways, terminals, aprons, control tower and facilities that directly support them.

DEFINITION SFOR AID TO SMES

53. 'debt instruments' means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period. Debt instruments may take the form of loans and other funding instruments which provide the lender/investor with a predominant component of fixed minimum remuneration and is at least partly secured;
54. 'entrusted entity' means a financial institution, such as the European Investment Bank and European Investment Fund, public law body and private law body with a public service mission, entrusted by a Member State to manage a financial instrument;
55. 'equity investment' means the provision of capital to an undertaking, invested directly or indirectly in return for total or partial ownership of that undertaking and where the equity investor may assume some management control of the undertaking and may share the undertaking's profits;
56. 'exit strategy' means a strategy for the liquidation of holdings by an investment vehicle or another investor, in accordance with a plan to achieve maximum return, including trade sale, write-offs, repayment of preference shares/loans, sale to another investment vehicle or another investor, sale to a financial institution and sale by public offering, including an initial public offering (IPO);
57. 'financial intermediary' means any financial intermediary, regardless of its form and ownership, including entities entrusted by the Member State for the purposes of implementing the risk finance measure, fund-of-funds, private equity investment funds and public investment funds;
58. 'first commercial sale' means the first sale by a company on a product or service market, excluding limited sales to test the market;
59. 'follow-on investment' means additional investment in a company subsequent to one or more previous investment rounds;
60. 'guarantee' means a written commitment to assume responsibility for all or part of a third party's newly originated quasi-equity or risk finance loan transactions;

³ OJ L 290, 8.11.2007, p. 14.

61. 'guarantee rate' means percentage loss coverage of each and every transaction of the guaranteed portfolio.
62. 'independent private investor' means a private investor who is independent from the SME in which it invests, including financial institutions, irrespectively of their ownership, to the extent that they bear the full risk in respect of their investment.;
63. 'investment' means one or more investment rounds in a company;
64. 'natural person' for the purpose of Articles 17 and 19 means a person who is not an undertaking for the purposes of Article 107(1) of the Treaty;
65. 'risk finance loans' means loans provided by a financial intermediary to the eligible SMEs on the condition that the intermediary contributes to the financing of such loans with its own resources in accordance with the ratios set out in Article 17(10) and that the financial intermediary is able to demonstrate on the basis of its previous 3-year financial statements that the loan portfolio supported under the risk finance measure includes a significant number of SMEs which, in the light of its internal rating criteria, would not have been financed without the measure.
66. 'scouting costs' mean costs related to the scouting of SMEs prior to their first commercial sale or which have been operating for less than five years following their first commercial sale on a market, where such costs do not lead to an investment. Scouting costs may not include the legal and administrative costs of the investment fund or its managers;
67. 'total financing' means one or more financing rounds in an eligible SME, including follow-on investments as covered by Article 19(5) of this Regulation;
68. 'quasi-equity investment' means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default. Quasi-equity investments can be structured as debt, unsecured and subordinated and in some cases convertible into equity, or as preferred equity;
69. 'replacement capital' means the purchase of existing shares in a company from an earlier investor or shareholder;
70. 'unlisted SME' means an SME which is not listed on the official list of a stock exchange and for the purposes of this Regulation, an SME listed on an alternative trading platform specialized in SMEs is considered unlisted.
71. 'organisational cooperation' means, **for example**, 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;
72. 'cooperation advisory services' means, **for example**, consulting, assistance and training for the exchange of knowledge and experiences and for improvement of cooperation;

73. 'cooperation support services' means, for example, the provision of office space, websites, data banks, libraries, market research, handbooks, working and model documents;
74. 'alternative trading platform' means a stock market or investment vehicle specialised in the exchange of SME shares by facilitating the matching between investors and target SMEs;

DEFINITIONS FOR AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION

75. 'arm's-length' means that the conditions of the transaction between the contracting parties do not differ from those which would be made between independent enterprises and contain no element of collusion. The setting up of an open, transparent and unconditional tender procedure for the transaction is considered as meeting the arm's length principle;
76. 'effective collaboration' means collaboration to exchange knowledge and/or technology, or to achieve a common objective based on the division of labour; the collaborating parties jointly define the scope of the research project and share the risk and the output of the collaboration. Subcontracting shall not be considered to be effective collaboration.
77. 'experimental development' means the acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills directly aiming at 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 and 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, but not where the primary objective is to develop markets. 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. In all other cases, prototypes and pilots should not be intended for commercial use.

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

78. '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;
79. 'highly qualified personnel' means personnel with a tertiary education degree and at least 5 years of relevant professional experience which may also include doctoral training;
80. '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 to complex systems, and may include the construction of prototypes in a laboratory environment and/or in an environment with simulated interfaces to existing systems as well as of small scale pilot lines to test and validate the manufacturing method performance, when necessary for the industrial research and notably for generic technology validation, insofar as such prototypes and pilot lines cannot be used commercially;
81. 'innovation advisory services' means consulting, assistance and training in the fields of knowledge transfer, acquisition, protection and trade in Intellectual Property Rights, licensing agreements and use of standards;
82. 'innovation support services' means the provision of office space, data banks, libraries, market research, use of laboratory, quality labelling, testing and certification;
83. 'innovative enterprise' means an enterprise that:
- (i) can demonstrate, by means of an evaluation carried out by an external expert that it will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure, or
 - (ii) its research and development costs represent at least 15% of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor;
84. 'organisational innovation' means the implementation of a new organisational method in the undertaking's business practices, workplace organisation or external relations and excludes changes in business practices, workplace organisation or external relations 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, regular seasonal and other cyclical changes and trading of new or significantly improved products;
85. 'personnel costs' means researchers, technicians and other supporting staff to the extent employed on the research project;

86. 'process innovation' means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment and/or software but excluding minor changes or improvements, an increase 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, regular seasonal and other cyclical changes and trading of new or significantly improved products;

87. 'research and knowledge-dissemination organisation' means an entity (such as universities or research institutes, technology-transfer agencies, innovation intermediaries, research-oriented physical and/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, and/or to widely disseminate the results of such activities on a non-discriminatory and non-exclusive basis, by way of teaching, publication or knowledge transfer;

The entity may pursue economic activities as long as these contribute to its primary goal in that they are not prejudicial to the independence of the entity's primary activities, are intrinsically linked to the primary activities, represent only a non-essential proportion of the budget devoted to independent research, and are carried out on market terms.

The financing, the costs and the revenues of economic activities must be accounted for separately.

Undertakings that can exert influence upon such an entity, in the quality of, for example, shareholders or members, shall enjoy no preferential access to the research capacities of such an entity or to the research results generated by it;

88. 'research infrastructure' means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers major scientific equipment or set 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)⁴;

⁴ In line with Article 2(a) of Council Regulation (EC) N° 723/2009 of 25.6.2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009, p. 1.

89. 'secondment' means temporary employment of personnel by a beneficiary with a right to return to the previous employer;

DEFINITIONS FOR AID FOR ENVIRONMENTAL PROTECTION

90. 'environmental protection' means any action designed to remedy or prevent damage to physical surroundings or natural resources by the 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;
91. 'energy saving' 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;
92. "energy infrastructures" means the energy infrastructures categories defined in Annex II of the draft Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009⁵;
93. 'Union standard' means:
- (e) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings; or
 - (f) the obligation under Directive 2008/1/EC of the European Parliament and of the Council⁶ to use the best available techniques as set out in the most recent relevant information published by the Commission pursuant to Article 17(2) of that Directive;
94. 'contaminated site' means a site where there is a confirmed presence, caused by man, of dangerous 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 (including forestry land). The environmental damage concerned covers damage to the quality of the soil or of surface water or groundwater.
95. 'cooperation mechanism' means a mechanism which fulfils the conditions of Article 6, 7 or 8 of Directive (EC) 2009/28 of the European Parliament and the Council on the promotion of the use of energy from renewable sources⁷;

⁵ <http://register.consilium.europa.eu/pdf/en/12/pe00/pe00075.en12.pdf>

⁶ OJ L 24, 29.1.2008, p. 8.

⁷ OJ L 140, 5.6.2009, p. 16.

96. '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;
97. 'biofuel' means liquid or gaseous fuel for transport produced from biomass;
98. 'sustainable biofuel' means a biofuel fulfilling the sustainability criteria set out in Article 17 of Directive (EC) 2009/28 of the European Parliament and the Council on the promotion of the use of energy from renewable sources⁸;
99. '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 and includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems;
100. 'cogeneration' means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
101. 'environmental tax' means a tax whose specific tax base has a clear negative effect on the environment or which seek to tax certain activities, goods or services so that the environmental costs may be included in their price and/or to enable producers and consumers to be oriented towards activities which better respect the environment;
102. 'Feed-in Premium' means a premium paid on top of the market price which exposes renewable energy producers to market prices;
103. 'Union minimum tax level' means the minimum level of taxation provided for in Union legislation; for energy products and electricity, the Union minimum tax level means the minimum level of taxation laid down in Annex I to Directive 2003/96/EC⁹;
104. 'tangible assets' means investments in land (including forestry land) which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment;
105. 'polluter pays principle' means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution, unless the person responsible for the pollution cannot be identified or cannot be held liable under Union or national legislation or may not be made to bear the costs of remediation. Pollution in this context is the damage caused by the polluter by directly or indirectly damaging the environment, or by creating conditions leading to such damage¹⁰ to physical surroundings or natural resources;
106. 'standards balancing responsibilities' means the balancing responsibilities normally applicable in a Member States to electricity producers, including to conventional electricity producers.

⁸ OJ L 140, 5.6.2009, p. 16.

⁹ OJ L 283, 31.10.2003, p. 51.

¹⁰ Council Recommendation of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters (OJ L 194, 25.7.1975, p. 1).

ANNEX II **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 III
Information regarding State aid exempt under the conditions of this Regulation

PART I

to be provided through the established Commission IT application as laid down in Article 10

Aid reference	<i>(to be completed by the Commission)</i>	
Member State		
Member State reference number		
Region	Name of the Region (NUTS¹¹)	Regional aid status¹²
Granting authority	Name	
	Postal address	
	Web address	
Title of the aid measure		
National legal basis (Reference to the relevant national official publication)		
Web link to the full text of the aid measure		
Type of measure	Scheme	Name of the beneficiary and the group¹³ it belongs to
	<i>Ad hoc aid</i>	
Amendment of an existing aid scheme or <i>ad hoc</i> aid		Commission aid reference
	Prolongation	
	Modification	
Duration¹⁴	Scheme	dd/mm/yyyy to dd/mm/yyyy
Date of granting¹⁵	<i>Ad hoc aid</i>	dd/mm/yyyy

¹¹ NUTS - Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.

¹² Article 107(3)(a) TFEU (status 'A'), Article 107(3)(c) TFEU (status 'C'), unassisted areas i.e. areas not eligible for regional aid (status 'N').

¹³ **An undertaking for the purposes of rules on competition laid down in the Treaty and for the purposes of this Regulation is any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The Court of Justice has ruled that entities which are controlled (on a legal or on a de facto basis) by the same entity should be considered as one undertaking. According to the definition of partner and linked enterprises in Annex II.**

¹⁴ Period during which the granting authority can commit itself to grant the aid.

¹⁵ Determined in line with recital 36 of the Regulation.

Economic sector(s) concerned	All economic sectors eligible to receive aid		
	Limited to specific sectors: Please specify in accordance with NACE Rev. 2¹⁶		
Type of beneficiary	SME		
	Large enterprises		
Budget	Total annual amount of the budget planned under the scheme¹⁷	National currency... (full amounts)	
	Overall amount of the <i>ad hoc</i> aid awarded to the undertaking¹⁸	National currency... (full amounts)	
	For guarantees¹⁹	National currency... (full amounts)	
Aid instrument (Art.5)	Grant/Interest rate subsidy		
	Loan/Repayable advances		
	Guarantee (where appropriate with a reference to the Commission decision²⁰)		
	Tax advantage or tax exemption		
	Provision of risk capital		
	Other (please specify)		
If co-financed by EU fund(s)	Name EU fund(s):	Amount of funding (as per EU fund)	National currency... (full amounts)

¹⁶ NACE Rev. 2 - Statistical classification of Economic Activities in the European Community. Typically, the sector shall be specified at group level.

¹⁷ In case of an aid scheme: Indicate the annual overall amount of the budget planned under the scheme or the estimated tax loss per year for all aid instruments contained in the scheme.

¹⁸ In case of an *ad hoc* aid award: Indicate the overall aid amount/tax loss.

¹⁹ For guarantees, indicate the (maximum) amount of loans guaranteed.

²⁰ Where appropriate, reference to the Commission decision approving the methodology to calculate the gross grant equivalent, in line with article 5(2)(c) of the Regulation.

PART II

to be provided through the established Commission IT application as laid down in Article 10

Please indicate under which provision of the GBER the aid measure is implemented.

Primary objective - General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME - bonuses in %
Regional aid - investment aid⁴⁴ (Art.15)	Scheme	...%	
	Ad hoc aid (Art. 1.)	...%	
Regional aid - operating aid (Art.16)	Transport costs of goods in eligible areas (Art. 16.2(a))	...%	
	Additional costs in outermost regions (Art. 16.2(b))	...%	
SME aid - investment aid (Art.17)		...%	
SME aid - SMEs' access to finance	Risk finance aid (Art. 17)	...national currency	
	Aid for start-ups (Art. 20)	...national currency	
SME aid - Aid to alternative trading platforms specialised in SMEs (Art.21)		...%; in case the aid measure takes the form of start-up aid: ... national currency	
SME aid - Aid for scouting costs (Art. 22)		...%	
Aid for research, development and innovation (Art. 23 – 26)	Aid for research and develop- ment projects (Art.23)	Fundamental research (Art. 21.2.a))	...%
		Industrial research (Art.23.2.b))	...%
		Experimental development (Art.23.2.c))	...%

⁴⁴ In the case of *ad hoc* regional aid supplementing aid awarded under aid scheme(s), please indicate both the aid intensity granted under the scheme and the intensity of the *ad hoc* aid.

	Aid for the establishment of research infrastructures (Art.24)	...%	
	Innovation aid for SMEs (Art.25)	...%	
	Aid for research and development in the agricultural and fisheries sectors (Art.26)	...%	
Training aid (Art.27)		...%	
Employment aid - Aid for disadvantaged and disabled workers (Art. 28–29)	Aid for the recruitment of disadvantaged workers or for the employment of disabled workers in the form of wage subsidies (Art.28)	...%	
	Aid for compensating the additional costs of employing disabled workers (Art.29)	...%	
Aid for Environmental protection (Art. 30– 36)	Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards (Art.30)	...%	
	Aid for early adaptation to future Community standards for SMEs (Art.31)	...%	
	Environmental investment aid for energy saving measures (Art. 3230)	...%	
	Environmental investment aid for high-efficiency cogeneration (Art.33)	...%	
	Environmental investment aid for the promotion of energy from renewable energy sources (Art. 34)	...national currency	
	Aid in the form of reductions in environmental taxes (Art. 35)	...%	
	Investment aid for remediation of contaminated sites (Art. 36)	...%	
	Investment aid for energy efficient district heating and cooling (Art.37)	...%	
	Aid for environmental studies(Art.38)	...%	

Part III

FORM FOR THE PUBLICATION OF INFORMATION ON INDIVIDUAL AID AWARDS UNDER ARTICLE 10 AND FOR THE TRANSMISSION OF THIS INFORMATION TO THE COMMISSION UNDER ARTICLE 12

Aid reference		
Member State		
Granting authority	Name	
	Web address	
Name of the beneficiary, VAT number and the group it belongs to		
Type of beneficiary	<i>SME</i>	
	<i>Large enterprise</i>	
Region in which the beneficiary is located	Name of the Region (NUTS⁴⁵)	Regional aid status⁴⁶
Economic sector(s) in which the beneficiary is active	<i>NACE Rev. 2 and short description</i>	
Aid element, expressed as full amount in national currency⁴⁷		
Aid instrument⁴⁸	Grant/Interest rate subsidy	
	Loan/Repayable advances/Reimbursable grant	
	Guarantee (where appropriate with a reference to the Commission decision⁴⁹)	
	Tax advantage or tax exemption	
	Risk finance	
	Other (please specify)	
Date of granting	dd/mm/yyyy	
Objective of the aid		
legal basis, including the implementing provisions and, where appropriate,		

⁴⁵ NUTS - Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.

⁴⁶ Article 107(3)(a) TFEU (status 'A'), Article 107(3)(c) TFEU (status 'C'), unassisted areas i.e. areas not eligible for regional aid (status 'N').

⁴⁷ Gross grant equivalent, or for risk finance schemes, the amount of the public investment

⁴⁸ If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument

⁴⁹ Where appropriate, reference to the Commission decision approving the methodology to calculate the gross grant equivalent.

the scheme under which the aid is granted	
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ANNEX IV

Application form in order for incentive effect (as specified in Article 6)

1. Information about the aid beneficiary:
 - name, registered address of main seat, main sector of activity (NACE Code),
 - declaration that firm is not in difficulty as defined under this Regulation];
 - declaration specifying aid (both de minimis and State aid) already received for another projects in the last 3 years;
 - declaration specifying aid received or to be received for the same project by other granting authorities.
5. Information about the project/activity to be supported:
 - Description of the project.
 - Description of the expected positive effects for the area concerned (e.g. number of jobs created or safeguarded, R&D&I activities, training activities, creation of a cluster)
 - relevant legal basis (national, Union or both)
 - planned start-end date of the project
 - location(s) of the project
2. Information about the financing of the project:
 - investments and other costs linked to it
 - ~~total eligible costs~~ (*è l'amministrazione concedente che li comunica al beneficiario, non vice versa*)
 - aid amount needed to execute the project/activity
 - ~~aid intensity~~ (*è l'amministrazione concedente che la comunica al beneficiario, non vice versa*)
3. **[ONLY FOR AD HOC AID TO LARGE UNDERTAKINGS]** Information about the need for aid and its expected impact:

Short explanation of the need for aid and its impact on the investment decision or location decision. Alternative investment or location in absence of aid shall be indicated.

ANNEX V
Provisions for the Member State's single website

- (1) Member States should organise their single State aid website, on which the information laid down in Articles 10(1)(b) and 2, should be published in a way to allow easy access to the information.
- (2) Access to the website should be provided by a search tool or a search user interface ('the search function'). By that search function, all individual information should be searchable and in any combination thereof. The result of the search function should also be available for download, in at least two different formats according to common standards, to allow the information for further processing in a spread sheet, e.g. XLS, CSV, or through other means using web techniques, e.g. XML, HTML.
- (3) Access to the website should be allowed to any interest party without restrictions. No prior user registration shall be required to access the website.

DRAFT

Processo negoziale nazionale sulla politica di coesione 2014-2020
Gruppo di coordinamento tecnico tra Regioni e Province Autonome Italiane sulla
Cooperazione Territoriale Europea 2014-2020

DOCUMENTO DI POSIZIONAMENTO E PROPOSTE OPERATIVE
DELLE REGIONI E PROVINCE AUTONOME
SUI TEMI PRIORITARI DELLA
COOPERAZIONE TERRITORIALE EUROPEA 2014-2020

Giugno 2013

[estratto]

PREMESSA

A seguito del confronto avviato nell'ambito del processo negoziale sulla politica di coesione 2014-20, in seno al Gruppo tecnico di coordinamento tra Regioni e Province autonome italiane per la Cooperazione Territoriale Europea (CTE), che ha condotto alla predisposizione di documenti di orientamento politico assunti dalle Regioni (approvati in seno alla Conferenza dei Presidenti nel corso del 2012), nonché agli sviluppi del processo negoziale riconducibili alla CTE, le Regioni e Province Autonome hanno concordato di procedere alla predisposizione di Documenti di Posizione di natura più tecnica.

Il presente Documento, organizzato in forma di schede tematiche, ha l'obiettivo di proporre i principali temi che, derivanti dall'esperienza diretta delle Regioni in materia di CTE, richiedono una riflessione puntuale tra Amministrazione centrale e le stesse Regioni, al fine di addivenire all'individuazione di soluzioni condivise che permettano di cogliere al meglio le opportunità che la futura CTE prospetta, prevenendo nel contempo il reiterarsi delle criticità che ne possono compromettere il buon funzionamento.

La finalità ultima è di pervenire alla formulazione di un quadro condiviso sul ruolo strategico della CTE per le Regioni italiane e quindi di sostenere, con valide argomenti, la conseguente necessità di mantenere e rilanciare tale ruolo nel periodo di programmazione 14-20.

In ciascuna scheda viene presentato un tema di carattere rilevante per la CTE in base all'esperienza di gestione dei programmi CTE attualmente in corso e alla lettura delle proposte dei nuovi Regolamenti. Si considera infatti dirimente orientare su tali temi, in modo strutturato e proficuo, l'interlocuzione con il MISE/DPS (ed eventualmente con altri Ministeri interessati – MAE e MEF in primis), avviata sulla programmazione 2014-2020 nei mesi scorsi.

Con tale finalità le schede sono state organizzate seguendo la seguente struttura:

1. **definizione del tema**, in cui viene inquadrato la problematica, in base alle esperienze pregresse ed alle indicazioni che emergono dagli sviluppi recenti del negoziato;
2. **questioni aperte**, dove vengono rappresentati i principali aspetti sui quali si ritiene urgente concordare una soluzione, al fine di poter procedere con la programmazione in un quadro ragionevolmente completo e certo;
3. **proposte delle Regioni e delle Province Autonome**; nella maggior parte dei casi dal confronto tra le Regioni sono emerse possibili soluzioni alle questioni poste, sia derivanti dalle lezioni apprese che dal confronto con altre esperienze, sulle quali le Regioni hanno concordato orientamenti condivisi da portare all'attenzione dell'Amministrazione centrale.

Inoltre, quale prima conclusione di un processo di ricognizione sviluppato dalle Regioni sulla programmazione CTE 2007-2013 e sulla progettualità ivi realizzata, in allegato (cfr Allegato A), si propone un documento di sintesi il cui fine è quello di rappresentare un utile supporto per agevolare la definizione degli orientamenti delle Regioni, sulla base di informazioni "fondate" sugli interessi ed i fabbisogni prioritari, rispetto ai diversi spazi della CTE 2014-2020, facilitando lo sviluppo quindi di un ragionamento tra le Regioni e l'Amministrazione centrale sugli obiettivi strategici e sui contenuti dei diversi Programmi.

INDICE SCHEDE

1. Gli spazi della cooperazione di interesse per l'Italia e le strategie macroregionali
2. Meccanismi di coordinamento e sistemi di *governance* in ambito CTE
3. Integrazione con la programmazione "*main-stream*"
4. Integrazione della programmazione CTE FESR con i programmi IPA II ed ENI
5. Sistemi di gestione e controllo
6. Modalità e meccanismi di cofinanziamento
7. Semplificazione, in particolare dal punto di vista del beneficiario
- 8. Gli aiuti di stato nelle operazioni CTE**
9. Personale operativo nei JTS. Modalità di gestione contrattuale al fine di garantire continuità operativa

Tabella di sintesi delle principali questioni aperte e proposte delle Regioni e delle PP.AA.

ALLEGATI

1. LE ESPERIENZE DELL'ATTUALE PROGRAMMAZIONE DA RIPORTARE NEL 2014-2020

SCHEDA 8	
Tematica:	Gli Aiuti di Stato nelle operazioni CTE

Definizione del Tema

L'esistenza di un meccanismo che garantisca l'attuazione e l'applicazione efficaci della normativa UE in materia di aiuti di Stato, come noto, figura tra le condizionalità *ex ante* di tipo generale di cui all'allegato IV della proposta di regolamento generale. Per quanto tali condizionalità, ai sensi dell'art. 17 della medesima proposta, non si applichino alla cooperazione territoriale europea, ciò nondimeno le Regioni e Province autonome, proprio perché si tratta di garantire disposizioni istituzionali minime per l'attuazione, l'applicazione e la supervisione della normativa comunitaria in materia di Aiuti di Stato, ritengono che il lavoro di approfondimento avviato dal Ministero sviluppo economico-DPS assieme alle Amministrazioni regionali, all'interno dello specifico Gruppo di lavoro 6, debba essere considerato quale cornice di riferimento generale rispetto alle considerazioni che si formulano a seguire, che hanno un valenza maggiormente operativa derivante dall'esperienza maturata nel corso dell'attuale programmazione 2007-13.

L'applicazione dei principi della concorrenza, e in particolare della disciplina degli aiuti di Stato, nello specifico ambito della Cooperazione territoriale europea è stata talvolta foriera, in sede di attuazione, di aspetti problematici sulla cui previa identificazione e soluzione sarebbe utile ragionare e porre rimedio per tempo. Si ritiene in tal senso che la mancata disciplina della materia a livello regolamentare e procedurale sia all'origine di tali criticità, che hanno poi comportato una generica e non altrimenti definita "responsabilità" dell'autorità di gestione, in termini operativi, di *"garantire che le operazioni destinate a beneficiare di un finanziamento (...) siano conformi alle norme comunitarie e nazionali applicabili"*.

I due punti fondamentali su cui si dovrebbe focalizzare l'attenzione e definire concrete indicazioni operative, riguardano:

- A)** Il piano giuridico: quale deroga utilizzare ai fini della compatibilità sostanziale e della legalità procedurale degli aiuti di Stato che il finanziamento delle attività progettuali dovessero configurare
- B)** IL piano operativo:
- 1) cosa significa concretamente "responsabilità dell'Autorità di Gestione" e come questa può/deve essere esercitata nel ruolo di gestione del Programma;
 - 2) a chi fanno capo i tre principali *tasks* collegati agli aiuti di Stato (CHI fa COSA), segnatamente:
 - a) la valutazione della sussistenza di elementi di aiuto di Stato all'interno delle attività progettuali (cd "*state aid relevance*")
 - b) la individuazione/scelta delle procedure formali adeguate (riconducibili essenzialmente a *de minimis*, esenzione dall'obbligo di notifica preventiva, notifica preventiva) affinché le attività progettuali siano successivamente implementate nella legalità e nella compatibilità in modo uniforme
 - c) il materiale espletamento di tali procedure formali (congiunta simmetrica, congiunta asimmetrica o disgiunta?).

Con riferimento al punto A), e da un punto di vista strettamente giuridico, si ritiene innanzitutto di sottoporre all'attenzione della Commissione europea la riflessione sulla effettiva sussistenza di tutti gli elementi costitutivi della nozione di aiuto di Stato ai sensi dell'art. 107§1 TFUE, ed in particolare della sussistenza di un vantaggio selettivo in capo ai partners progettuali e ai vari attori progettuali, dal momento che trattasi di un budget messo a gara, secondo procedure trasparenti, destinato alle idee progettuali che

qualitativamente risultano migliori: il finanziamento delle stesse risulta quindi non già un'attribuzione di vantaggio, ma di corrispettivo per una serie di attività (lavori e servizi) aventi una finalità comune macro, ovvero quella della cooperazione territoriale.

Ciò premesso, ma con riferimento alle proposte già emerse nell'ambito della modernizzazione, si segnala in particolare di non condividere la *ratio* alla base dell'introduzione del punto 78 nel *draft* di nuovi orientamenti in materia di aiuti di stato a finalità regionale, che trova il suo corrispettivo nell'articolo 15 par. 12 e nel considerando (44) della proposta di nuovo regolamento generale di esenzione per categoria.

Si ritiene infatti che l'obiettivo principale delle attività progettuali nell'ambito dei programmi CTE sia essenzialmente quello della cooperazione, la cui autonomia è stata ribadita già dal 2007 quando la cooperazione è assunta ad obiettivo accanto a quello della convergenza e della competitività regionale ed occupazione. Il finanziamento delle attività progettuali non può essere considerato perseguire altre finalità come lo sviluppo regionale o la tutela dell'ambiente o la ricerca e l'innovazione, se non come obiettivi secondari ed ancillari rispetto all'autonomo obiettivo della cooperazione transfrontaliera e transnazionale.

Pertanto, il meccanismo introdotto dai citati punto 78 della proposta di *Regional aid guidelines 2014-2020*, e considerando (44) unitamente ad articolo 15§12 del *draft General Block Exemption Regulation*, nell'intento di livellare le intensità degli aiuti per i diversi partners di un medesimo progetto in funzione dell'ubicazione prevalente degli investimenti progettuali, crea condizioni di disparità fra progetti analoghi sotto il profilo della tipologia di investimenti ed aree interessate, ma che potrebbero differenziarsi per la distribuzione degli investimenti per categoria di regioni assistite. L'intento della semplificazione procedurale si tradurrebbe in un allontanamento dagli obiettivi di ravvicinamento e di riduzione delle diversità propri della cooperazione territoriale.

Con riferimento al punto B2), il contesto che si presenta nella Cooperazione territoriale molto differisce dalla tradizionale situazione contributiva monovalente "amministrazione concedente => impresa beneficiaria", in cui l'eventuale elemento di aiuto di Stato deve essere individuato nel provvedimento amministrativo di concessione imputabile direttamente nell'amministrazione pubblica: ci si trova invece dinanzi ad una situazione polivalente "autorità di gestione => partner progettuali => soggetti coinvolti nelle attività progettuali" in cui l'eventuale elemento di aiuto di Stato deve essere individuato non solo nella sottoscrizione del contratto di finanziamento (non già provvedimento di concessione), ma anche e spesso soprattutto negli atti formali, qualora esistano, che "definiscono" i rapporti tra partner progettuali e soggetti terzi coinvolti nelle attività progettuali. È quindi indispensabile:

1. definire per ciascuna situazione quale atto e quale momento deve intendersi rilevante ai fini della "concessione" (ad es. ai fini del computo del triennio *de minimis*);
2. definire i livelli di possibile configurazione di aiuti di Stato, primo livello tra AdG e partner progettuale, secondo livello tra quest'ultimo e i terzi coinvolti;
3. in particolare per il secondo livello (fattispecie degli aiuti indiretti) definire chi è "amministrazione concedente" soprattutto ai fini dell'individuazione del centro di responsabilità cui imputare gli oneri sostanziali e procedurali quali ad es. la quantificazione degli aiuti indiretti e relative modalità, gestione della modulistica, controlli e verifiche sulle autocertificazioni e/o sul rispetto delle condizioni e delle soglie (con riferimento ad es. ai parametri dimensionali di PMI o al plafond *de minimis* ricevibile).

Se la gestione degli Aiuti di Stato appartiene in linea di principio a ciascuno Stato membro, la stessa Commissione europea aveva già intuito la possibilità che, nei contesti di cooperazione tra più Stati, potesse emergere la necessità di strumenti per la gestione congiunta di alcuni ambiti, a livello sostanziale e procedurale.

Alla luce della nuova programmazione, pare quindi necessario che la Commissione europea provveda a regolamentare per tempo, già a monte dei singoli bandi e dell'esecuzione degli interventi, gli aspetti schematicamente segnalati, attraverso linee guida condivise ed approvate formalmente da DG Regio e DG Comp, che individuino con trasparenza e chiarezza il metodo e le procedure su cui impostare un'intera programmazione di lavoro nella certezza giuridica per tutti i soggetti coinvolti.

Considerata la contestuale revisione di tutte le norme sostanziali e procedurali degli aiuti di Stato della modernizzazione avviata dal Commissario VP Almunia, sarebbe opportuno cogliere l'occasione per istituire delle formule di gestione semplificata degli aiuti di Stato nella CTE che facciano salva la tutela della concorrenza senza che il suo perseguimento comprometta il raggiungimento degli obiettivi della cooperazione territoriale. Diventa quindi prioritario ed essenziale, ai fini della coerenza delle politiche europee, garantire unitarietà e omogeneità anche nella gestione transfrontaliera e transnazionale degli aiuti di Stato, nei confronti di partner che sono attori di un unico progetto pur appartenendo a Stati diversi.

Questioni aperte

Contributo e azione delle Regioni nell'ambito della modernizzazione delle regole degli aiuti di Stato (SAM, *State Aid Modernisation*) e in particolare della revisione del Regolamento generale di esenzione per categoria (in scadenza il 28 giugno pv): la posizione delle Regioni è in corso di elaborazione nell'ambito del coordinamento tecnico in materia di aiuti di stato in seno alla commissione ACI della Conferenza.

Il contributo in seno alla consultazione sulla revisione del Regolamento 1998/2006/CE (*de minimis*), relativamente agli aspetti rilevanti per la cooperazione territoriale, è stato reso attraverso la posizione delle Regioni e delle Province autonome approvata dalla Conferenza dei presidenti in data 16 maggio 2013 (13/043/CR7/C3).

Proposte delle Regioni e PPAA

- a. Nell'ambito della consultazione sulla revisione del regolamento 1998/2006/ce (cd. *De minimis*) le Regioni si sono già espresse segnalando oltremodo opportuna l'istituzione di un registro europeo degli aiuti de minimis, che potrebbe derivare dall'implementazione delle matrici del SANI e del SARI, per le seguenti principali ragioni:
1. il rispetto delle nuove norme relative al calcolo e all'imputazione dei contributi de minimis nei casi di gruppi/associazioni di imprese, acquisizioni e fusioni (considerando (4) e articolo 3 paragrafo 8), non può essere garantito qualora ci si trovi dinanzi ad un'impresa controllata da o controllante imprese aventi sede in altro Stato membro, e quindi soggette al monitoraggio e controllo dello "storico de minimis" di altre amministrazioni statali;
 2. il passaggio ad una banca dati rispetto al meccanismo dell'autodichiarazione comporterà problemi di coordinamento tra amministrazioni e metodologie diverse, con la necessità, probabilmente, di intervenire su procedure già avviate e software già predisposti, con l'aggravante della co-gestione di 4 strumenti de minimis diversi;
 3. lo strumento de minimis è ampiamente utilizzato nell'ambito dei programmi di cooperazione territoriale, transfrontaliera e transnazionale, in cui le imprese hanno la possibilità di ricevere sui vari bandi contributi de minimis "apolidi", riconducibili in termini di responsabilità alle autorità di gestione, ma sulla concessione dei quali non esiste ad oggi una univoca interpretazione in merito a modalità di imputazione "statale" e di registrazione ai fini del controllo del rispetto della soglia;
 4. anche al di fuori delle ipotesi di finanziamenti nell'ambito dei programmi di cooperazione territoriale, le Regioni transfrontaliere (e non solo) spesso hanno come beneficiarie imprese operative su entrambi i versanti del confine, direttamente o attraverso filiali;
 5. la costruzione di un unico registro comporterebbe evidenti risparmi di spesa per tutte le amministrazioni pubbliche, che altrimenti dovrebbero provvedere singolarmente all'istituzione di singole banche dati statali, senza nemmeno avere la garanzia della confrontabilità delle rispettive matrici.
- b. Con specifico riferimento alla proposta della commissione di revisione del reg. (CE) 800/2008 è attualmente in corso, in ambito di coordinamento tecnico Aiuti di Stato della Commissione ACI, la

formulazione di integrazioni e modifiche al *Draft* recentemente pubblicato dalla Commissione europea; in particolare sono già stati esaminati gli articoli con esplicito richiamo alla CTE.

- c. Le Regioni e PPAA, nell'ambito dei processi di valutazione per la selezione delle proposte progettuali da finanziare a valere sui futuri Programmi CTE, al fine di supportare gli organi di Programma e di coordinamento italiani per la CTE nella corretta applicazione della normativa in tema di Aiuti di Stato, con particolare riferimento alla partecipazione dei beneficiari italiani ai progetti, propongono la costituzione di una "Lista di esperti in Aiuti di Stato" a livello nazionale e l'emanazione del relativo "Regolamento attuativo per l'utilizzo della Lista esperti AdS".

TABELLA DI SINTESI DELLE PRINCIPALI QUESTIONI APERTE E PROPOSTE DELLE REGIONI E DELLE PP.AA.

TEMATICA	PRINCIPALI QUESTIONI APERTE	PROPOSTE
[omissis]		
8. Gli aiuti di stato nelle operazioni CTE	<ul style="list-style-type: none"> • Contributo e azione delle Regioni nell'ambito della modernizzazione delle regole degli Aiuti di Stato • Contributo in seno alla consultazione sulla revisione del Regolamento 1998/2006/CE (<i>de minimis</i>), relativamente agli aspetti rilevanti per la cooperazione territoriale, reso attraverso la posizione approvata dalla Conferenza delle Regioni 	<ul style="list-style-type: none"> • Nell'ambito della consultazione sulla revisione del regolamento <i>de minimis</i> le Regioni si sono già espresse positivamente in relazione all'istituzione di un registro europeo degli aiuti <i>de minimis</i> • Con riferimento alla proposta della commissione di revisione del reg. (CE) 800/2008 è attualmente in corso la formulazione di integrazioni e modifiche al Draft recentemente pubblicato dalla Commissione europea con particolare attenzione agli articoli relativi alla CTE • Proposta di costituire una "Lista di esperti in Aiuti di Stato" a livello nazionale ed emanazione del relativo "Regolamento attuativo per l'utilizzo della Lista esperti AdS"



REGIONE LOMBARDIA

Direzione Generale AMBIENTE, ENERGIA E SVILUPPO SOSTENIBILE

U.O. Qualità dell'Aria, Emissioni Industriali e Rumore

Osservazioni e proposte

sulla revisione della disciplina comunitaria degli Aiuti di Stato per la tutela ambientale (2008/C 82/01) e del regolamento generale di esenzione per categoria (Reg. 800/2008) nell'ambito della consultazione pubblica aperta dalla Commissione per la modernizzazione degli Aiuti di Stato dell'UE

1) PREMESSA

Il ruolo svolto dagli aiuti di Stato, nell'ambito della strategia di Europa 2020, è quello di favorire la crescita e la loro capacità di *“dare un contributo attivo e costruttivo agli obiettivi di Europa 2020 stimolando e sostenendo le iniziative riguardanti tecnologie più innovative, più efficienti e più verdi e agevolando parallelamente l'accesso al sostegno pubblico per gli investimenti, al capitale di rischio e ai finanziamenti per la ricerca e lo sviluppo”*;

Più nello specifico, tra gli obiettivi della modernizzazione degli Aiuti di Stato e gli strumenti per conseguirli, gli aiuti di Stato dovrebbero mirare a colmare carenze di mercato ben individuate (*market failure*), contribuire a raggiungere obiettivi di interesse comune che hanno i minori effetti distorsivi possibili sul buon funzionamento del mercato interno grazie ad una politica efficace volta a limitare le distorsioni della concorrenza, a mantenere condizioni di parità e a contrastare il protezionismo.

2) PROPOSTA

Nell'ambito della consultazione pubblica aperta dalla Commissione Europea per la revisione della disciplina comunitaria degli Aiuti di Stato per la tutela ambientale e del regolamento generale di esenzione (RGEC), Regione Lombardia intende proporre un ampliamento dei campi di applicazione anche alle **politiche per la qualità dell'aria**, finalizzate alla tutela dell'ambiente e della salute dei cittadini europei, tenuto conto delle difficoltà a rispettare i limiti di qualità dell'aria fissati dalla direttiva 2008/50/CE *“relativa alla qualità dell'aria ambiente e per un'aria più pulita in Europa”* individuando, nel rispetto ed in stretta connessione con il *corpus* normativo riguardante gli Aiuti di Stato, specifiche ed integrate modalità di intervento.

In particolare, il presente contributo contiene alcune specifiche proposte relativamente alla proposta (*draft*) della DG Concorrenza della UE di un Regolamento generale di esenzione per categoria (RGEC), la cui consultazione pubblica avrà termine il 28 giugno 2013.

3) IL FENOMENO DELL'INQUINAMENTO ATMOSFERICO NELL'UNIONE EUROPEA

Il Report No 4/2012 dell'Agenzia Europea dell'Ambiente (EEA) sulla "Qualità dell'aria in Europa" prende in esame l'esposizione dei cittadini alle sostanze inquinanti ed offre un'istantanea della situazione a livello europeo.

Qui di seguito si riportano le stime riguardanti la popolazione urbana europea esposta a livelli di concentrazione di sostanze inquinanti al di sopra dei valori limite e dei valori obiettivo stabiliti dalla direttiva 50/2008 e dalla linee guida dell'Organizzazione Mondiale della Sanità (più severa della normativa UE). Le stime sono relative al periodo 2008 – 2010.

Table ES.1 Percentage of the urban population in the EU exposed to air pollutant concentrations above the EU and WHO reference levels (2008–2010)

Pollutant	EU reference value	Exposure estimate (%)	WHO reference level	Exposure estimate (%)
PM _{2.5}	Year (20)	16–30	Year (10)	90–95
PM ₁₀	Day (50)	18–21	Year (20)	80–81
O ₃	8-hour (120)	15–17	8-hour (100)	> 97
NO ₂	Year (40)	6–12	Year (40)	6–12
BaP	Year (1 ng/m ³)	20–29	Year (0.12 ng/m ³)	93–94
SO ₂	Day (125)	< 1	Day (20)	58–61
CO	8-hour (10 mg/m ³)	0–2	8-hour (10 mg/m ³)	0–2
Pb	Year (0.5)	< 1	Year (0.5)	< 1
C ₆ H ₆	Year (5)	< 1	Year (1.7)	7–8

Colour coding of exposure estimates fraction of urban population exposed to concentrations above the reference levels:

	< 10 %	10–50 %	50–90 %	> 90 %

Note: The pollutants are ordered in terms of their relative risk for health damage – highest on top.
 This estimate refers to a recent three year period (2008–2010) and includes variations due to meteorology, as dispersion and atmospheric conditions differ from year to year.
 The reference levels included EU limit or target levels and WHO air quality guidelines (AQG).
 The reference levels in brackets are in µg/m³ except for CO which is in mg/m³ and BaP in ng/m³.
 For some pollutants EU legislation allows a limited number of exceedances. This aspect is considered in the compilation of exposure in relation to EU air quality limit and target values.
 The comparison is made for the most stringent EU limit or target values set for the protection of human health. For PM₁₀ the most stringent standard is for 24-hour mean concentration.
 For PM_{2.5} the most stringent EU standard is the 2020 indicative annual limit value (20 µg/m³).
 As the WHO has not set AQG for BaP and C₆H₆, the WHO reference level in the table was estimated assuming an additional lifetime risk of 1 x 10⁻⁶.

Sources: EEA, 2012d (CSI 004); AirBase v. 6.

Particolato (PM), costituisce il maggior rischio per la salute dovuto all'inquinamento atmosferico nell'UE. La relazione stima che nel 2010 il 21% della popolazione urbana sia stata esposta a livelli di concentrazione di PM10 superiori ai valori limite giornalieri più severi, fissati dall'UE a salvaguardia della salute. Fino al 30% della popolazione urbana era esposta a livelli di concentrazione del particolato più fine (PM2,5) superiori ai valori limite annuali fissati dall'UE.

L'ozono (O3), può provocare problemi all'apparato respiratorio e l'esposizione nei centri urbani è molto elevata: il 97% degli abitanti delle città dell'UE nel 2010 era esposto a

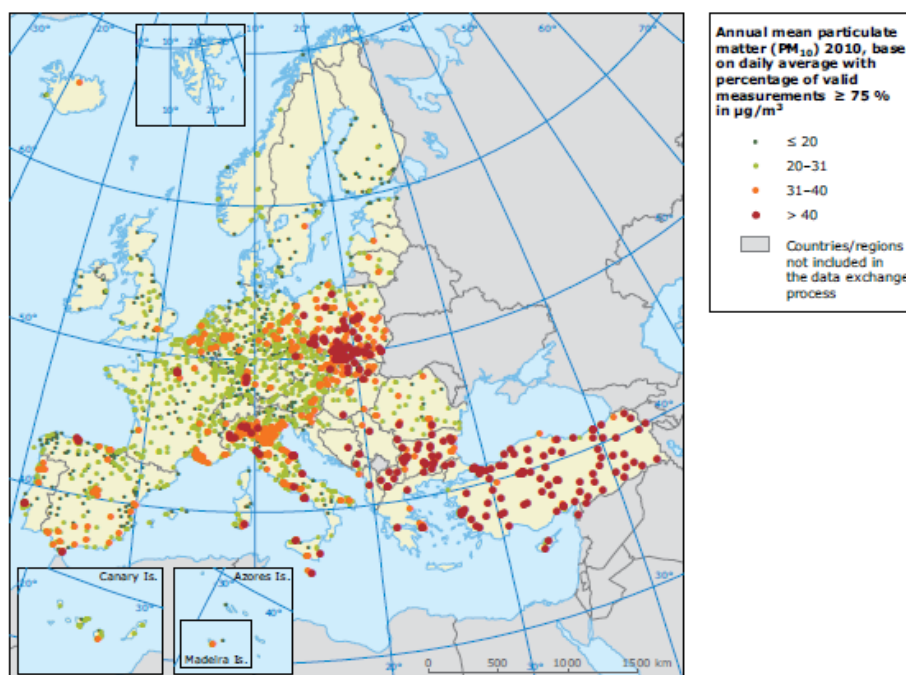
concentrazioni di O₃ superiori al livello di riferimento dell'OMS. Il 17% era esposto a concentrazioni superiori al valore obiettivo fissato dall'UE per l'O₃. Nel 2009, il 22% delle terre coltivabili in Europa era esposto a concentrazioni nocive di O₃, che hanno provocato la perdita di raccolti.

- **Il biossido di azoto (NO₂)** è una delle principali cause di eutrofizzazione (crescita eccessiva di piante e alghe nell'acqua) e di acidificazione e contribuisce inoltre alla formazione di PM e O₃. Nel 2010, il 7% degli abitanti delle città europee era esposto a livelli di NO₂ superiori ai valori limite dell'UE. Le emissioni a livello nazionale di ossidi di azoto in molti paesi europei superano ancora i massimali di emissione stabiliti dalla normativa dell'UE e previsti dagli accordi presi in ambito ONU.

- **Il benzo(a)pirene (BaP)** è cancerogeno. Una percentuale importante della popolazione urbana nell'UE (20-29% tra il 2008 e il 2010) era esposta a concentrazioni superiori al valore obiettivo dell'UE, che dovrà essere rispettato entro il 2013. L'aumento delle emissioni di BaP registrato in Europa nel corso degli ultimi anni è pertanto un motivo di preoccupazione.

- Nell'UE le concentrazioni nell'aria esterna di **monossido di carbonio, benzene e metalli pesanti (arsenico, cadmio, nichel, piombo)** sono generalmente modeste, localizzate e sporadiche, con pochi casi di superamento dei valori limite e dei valori obiettivo fissati dalla normativa europea.

Map 2.1 Annual mean concentrations of PM₁₀ in 2010



Note: The red dots indicate stations reporting exceedances of the 2005 annual limit value (40 µg/m³), as set out in the Air Quality Directive (EU, 2008c).
 The orange dots indicate stations reporting exceedances of a statistically derived level (31 µg/m³) corresponding to the 24-hour limit value, as set out in the Air Quality Directive (EU, 2008c).
 The pale green dots indicate stations reporting exceedances of the WHO air quality guideline for PM₁₀ of less than 20 µg/m³ but not in exceedance of limit values as set out in the Air Quality Directive (EU, 2008c).
 The dark green dots indicate stations reporting concentrations below the WHO air quality guideline for PM₁₀ and implicitly below the limit values as set out in the Air Quality Directive (EU, 2008c).

Source: AirBase v. 6.

4) IL TAVOLO TECNICO EUROPEO "AIR QUALITY GROUP"

Il fenomeno dell'inquinamento atmosferico non è presente solo nella Regione proponente e in alcune aree dell'Italia ma è comune a molte altre Regioni di altri Stati Membri, soprattutto quelle in cui l'antropizzazione e la densità di popolazione unita all'industrializzazione sono maggiori.

Per tali ragioni è stato istituito nel 2009 il tavolo tecnico europeo "Air Quality Group" che riunisce alcune regioni del bacino padano e altre regioni di Paesi europei, tutte caratterizzate da comuni criticità relative alla qualità dell'aria, oltre che da fattori socio-economici simili.

Partecipano al gruppo le seguenti Regioni:

- Lombardia
- Piemonte
- Veneto
- Emilia-Romagna
- Baden-Wurttemberg
- Bayern
- Greater London
- Nord Rhein Westfalen
- Steiermark
- Randstadt
- Catalunya
- Le Fiandre

Gli obiettivi del gruppo di lavoro consistono in uno scambio di esperienze e in un confronto sistematico sulle misure e le azioni intraprese per la diminuzione dell'inquinamento atmosferico al fine di arrivare ad elaborare proposte comuni da sottoporre alla Commissione Europea nella fase di revisione della normativa in materia di qualità dell'aria.

Nel 2011/12 l'Air Quality Group ha finalizzato i lavori alla predisposizione di un *position paper* contenente le proposte comuni da trasferire alla CE per la stesura della nuova direttiva sulla qualità dell'aria.

Tra i contenuti del *position paper* vi sono, in particolare:

- il riconoscimento di zone europee aventi specificità meteo-climatiche e orografiche avverse per la qualità dell'aria (tra cui il bacino padano);
- l'assegnazione di fondi strutturali per le zone con specificità avverse;
- la semplificazione nell'identificazione dei valori limiti per i diversi inquinanti.

5) IL FENOMENO DELL'INQUINAMENTO ATMOSFERICO IN LOMBARDIA NELL'AMBITO DEL BACINO PADANO

Il contesto meteorologico e orografico

L'ambito territoriale lombardo si colloca nel più ampio ambito del Bacino Padano, che costituisce una realtà omogenea dal punto di vista meteo-climatico e orografico: la presenza della barriera alpina e appenninica a chiudere su ben tre lati il bacino, costituisce dal punto di vista della qualità dell'aria una sorta di "catino" chiuso in cui le emissioni di inquinanti si distribuiscono, ma faticano a disperdersi. Ciò determina condizioni meteorologiche particolarmente sfavorevoli per la qualità dell'aria: le

perturbazioni atlantiche e settentrionali spesso non entrano nel bacino, i venti medi sono tra i più bassi d'Europa; frequentemente, si instaurano condizioni di alta pressione associata a stabilità atmosferica che persistono per più giorni consecutivi, provocando l'accumulo delle emissioni entro pochi metri dal suolo.

Il contesto socioeconomico

La realtà socio-economica della Lombardia ha un peso rilevante sia con riferimento alla densità abitativa che, nelle aree di pianura e nei fondovalle (che costituiscono meno della metà del territorio) risulta essere elevata, sia riguardo alle attività antropiche ed economiche che contribuiscono, fra l'altro, in modo significativo alla produzione della ricchezza del Paese, con una realtà produttiva basata soprattutto su piccole e medie imprese.

Il Bacino Padano infatti rappresenta una realtà importante in termini di popolazione residente concentrata nella fascia di pianura (circa il 40% della popolazione italiana) e di ricchezza prodotta (più del 50% dell'intero PIL italiano).

Pertanto ciò posto, è necessario mettere in diretta relazioni le emissioni con la densità di popolazione presente nell'area geografica considerata nonché con l'incidenza dell'attività economica, concentrata nella medesima area.

Infatti, se si considera l'emissione di inquinanti pro-capite o pro unità di PIL prodotto, i risultati del Bacino Padano evidenziano una realtà tra le più virtuose d'Europa. L'emissione pro-capite e pro unità di PIL può costituire un valido indicatore di quanto un'area fortemente antropizzata stia cercando di contrastare effettivamente l'inquinamento atmosferico dal punto di vista del contenimento delle emissioni, nonostante le condizioni meteorologiche e geografiche restino avverse.

Ad esempio, il confronto tra le emissioni pro-capite delle diverse regioni del Bacino Padano con le emissioni pro-capite del resto d'Europa evidenzia infatti come il Bacino Padano sia tra le aree con minori emissioni specifiche.

Le misure regionali attuate

Considerata tale situazione, tutte le Regioni del Bacino, compresa Regione Lombardia, hanno operato, anche singolarmente, secondo quanto previsto dalle direttive, attuando mirati programmi e piani di risanamento regionali, che, insieme all'evoluzione delle emissioni dovute alla legislazione nazionale e comunitaria vigente, hanno permesso almeno per alcuni inquinanti, di ottenere una riduzione anche significativa delle concentrazioni rilevate.

Al fine di abbassare ancora i livelli degli inquinanti più critici, in tutte le Regioni della Valle del Po, riunite dal 2005 nel Tavolo di coordinamento interregionale del Bacino Padano, si sono pianificati interventi utili a ridurre le emissioni anche nei prossimi anni, nonostante le difficoltà connesse ad una diffusione dei veicoli diesel (la cui vendita fino all'euro IV è stata possibile anche senza filtro antiparticolato) e ad un andamento in aumento dell'uso della legna per il riscaldamento civile.

Tutto questo conferma quindi come la difficoltà a rispettare i limiti normativi fissati nei tempi previsti sia dovuta alla tipicità delle condizioni meteorologiche e geografiche (contesto fattuale) sia riferita alla elevata densità abitativa ed alla notevole concentrazione di attività antropiche nelle aree di pianura considerate.

Pertanto può essere mirato e diretto ad ampliare la sfera di attività delle PP.AA. impegnate a ridurre questo tipo di inquinamento un intervento a favore delle imprese per miglioramento delle performance emissive.

L'esperienza di Regione Lombardia in questo senso è stata quella di intervenire con bandi per il finanziamento di filtri antiparticolato a diverse categorie: tuttavia lo strumento utilizzato è stato quello del *de minimis* e successivamente dell'aiuto "anticrisi" N248/09, entro i limiti temporali e di soglia permessi dall'aiuto stesso.

Vista la buona riuscita dei bandi regionali ma ravvisata la necessità pressante di continuare su questa linea utilizzando strumenti di più ampio respiro rispetto al solo Regolamento "*de minimis*" al fine di avere una coerente politica antinquinamento, in particolare contro il particolato fine, la Regione proponente evidenzia la necessità di prevedere un sicuro strumento di finanziamento concordato con lo Stato ma utile a tutte le Regioni, italiane ed europee, con il medesimo problema relativo alla qualità dell'aria, dal momento che è dimostrato che i limiti delle Direttive di settore in aree fortemente antropizzate e industrializzate sono difficilmente perseguibili senza strumenti di incentivo che superino l'*impasse* del fallimento del mercato rispetto alla diffusione presso le imprese (causa principale di questo tipo di inquinamento) di "prodotti per la qualità dell'aria", stante l'attuale mancanza di investimento da parte delle imprese in questo momento di crisi economica pluriennale che costringe le imprese a tagliare e/o rinviare gli investimenti privati in materia ambientale.

6) ATTUALE QUADRO NORMATIVO E CRITICITA'

Gli aiuti alla tutela dell'ambientale sono disciplinati dai seguenti atti:

- Regolamento (CE) n. 800/2008 della Commissione del 6 agosto 2008 ("RGEC") che dichiara alcune categorie di aiuti compatibili con il mercato comune in applicazione degli articoli 87 e 88 del trattato (regolamento generale di esenzione per categoria); le disposizioni specifiche sono contenute nella sezione 4 (articoli 17-15) del regolamento;
- Disciplina comunitaria degli aiuti di Stato per la tutela ambientale (GUUE n. C 82 del 01.04.2008).

Tra le categorie di Aiuti previste dalla disciplina e dal Regolamento, si sottolinea l'assenza di uno specifico ambito di applicazione per le politiche finalizzate alla tutela della **qualità dell'aria**, nonostante le difficoltà nel rispetto dei limiti normativi comunitari fissati per le sostanze inquinanti sia un elemento che accomuna diverse aree europee.

Peraltro occorre osservare come, fra le misure ammissibili dalla citata disciplina comunitaria degli aiuti di Stato per la tutela ambientale, siano incluse le categorie di Aiuti finalizzati al superamento di norme dell'Unione europea (o, in assenza di queste, innalzamento del livello di tutela ambientale), oppure all'adeguamento anticipato a norme dell'Unione europea non ancora in vigore.

Nell'ambito delle politiche per la qualità dell'aria, è ipotizzabile che la disciplina comunitaria degli aiuti di Stato per la tutela ambientale possa consentire misure di Aiuti non solo laddove vengano attuate politiche di miglioramento della qualità dell'aria attraverso l'innalzamento del livello di tutela o l'anticipazione di norme comunitarie non ancora in vigore, ma anche laddove i limiti previsti dalle direttive comunitarie non vengano sistematicamente rispettati su aree vaste e fortemente antropizzate.

Poiché la Commissione ha osservato che gli Aiuti di Stato possono, a determinate condizioni, *“essere strumenti efficaci per realizzare obiettivi di interesse comune, tra cui la correzione dei fallimenti di mercato”*, è ravvisabile che proprio laddove si incontrano maggiori difficoltà nel rispetto dei limiti territoriali fissati in sede comunitaria, si sia di fronte ad esternalità negative che possono necessitare di un chiaro intervento pubblico, anche mediante lo strumento degli Aiuti di Stato.

Sino ad oggi, nell'ambito della disciplina comunitaria degli aiuti di Stato per la tutela ambientale, **la Commissione ha ritenuto opportuno privilegiare la tutela della concorrenza a scapito di specifiche politiche finalizzate alla tutela della qualità dell'aria.**

Tuttavia, situazioni potenzialmente distorsive della concorrenza sono già in atto nell'ambito delle imprese europee operanti nel mercato comune, perché laddove i limiti fissati dalle Direttive non sono rispettati al punto da richiedere l'attuazione di piani e programmi, le autorità pubbliche emanano **provvedimenti** particolarmente rigorosi **che incidono sulla libertà di circolazione e sull'imposizione di requisiti ambientali su vaste aree il cui adeguamento genera costi per le imprese e una diminuzione dei loro utili.** In quest'ottica, gli incentivi finanziari possono giocare il ruolo di misure di accompagnamento ai necessari provvedimenti per il contrasto all'inquinamento.

7) LA PROPOSTA PER UN NUOVO “RGEC” DA PARTE DELLA DG CONCORRENZA.

Nell'ambito della consultazione su un progetto di Regolamento generale di esenzione per categoria (RGEC), la DG Concorrenza della Commissione UE ha avanzato nel mese di maggio 2013 una proposta di Regolamento aperto al contributo di istituzioni, enti pubblici, cittadini ed imprese interessati.

Il *draft* del nuovo RGEC contiene le disposizioni specifiche per gli Aiuti finalizzati alla tutela ambientale (artt. 30-38). Qui di seguito vengono riportate alcune considerazioni e proposte.

1. Il *draft* proposto non include, fra i propri ambiti di applicazione, le politiche per la qualità dell'aria, nonostante sia stato ben individuato il fallimento di mercato

(inquinamento atmosferico) e l'interesse comune di molte Regioni italiane ed europee a superare tale criticità attraverso un approccio organico e condiviso da istituzioni, imprese e cittadini.

Proposta: includere fra gli ambiti di applicazione le politiche per la qualità dell'aria.

2. Nel *draft* viene confermata la volontà dell'UE di consentire soltanto agli Stati membri che, in materia di qualità dell'aria già ottemperano ai limiti fissati dalla direttiva 2008/50/CE attualmente vigente, di poter andare oltre gli *standards* unionali in materia di protezione ambientale, avvalendosi dello strumento degli Aiuti di Stato in esenzione a favore del sistema delle imprese insediate nel proprio territorio. Le disposizioni attualmente previste nel *draft* impediscono un'analogha possibilità a quegli Stati membri che per ragioni soggettive e oggettive, come il quadro meteorologico e orografico e le conseguenti procedure di infrazione, non ottemperano ai limiti di qualità dell'aria fissati dalla normativa comunitaria vigente. Nell'ambito delle politiche per la qualità dell'aria si corre il rischio di portare avanti anche nel nuovo RGEC il paradosso di fornire uno strumento di Aiuto, semplice e vantaggioso, a coloro che già riescono a rispettare le disposizioni normative comunitarie, escludendo coloro che invece non sono nelle condizioni, comprovate e dimostrabili, di poterle rispettare. Il caso del Bacino Padano è particolarmente eloquente: i dati statistici a disposizione dimostrano che, nonostante le Regioni non rispettino i limiti di qualità dell'aria fissati dalle normative europee, il sistema produttivo è tra i più "virtuosi" in termini emissivi nell'ambito dell'UE.

Proposta: includere nel RGEC la possibilità anche per gli Stati membri (o Regioni) che non rispettano i limiti fissati dalla normativa comunitaria di poter essere inclusi fra coloro che possono avvalersi degli Aiuti di Stato in esenzione per superare i fallimenti di mercato (come l'inquinamento atmosferico) laddove questi si manifestano e laddove i cittadini e imprese soffrono in termini di divieti e oneri economici imposti dalle autorità pubbliche in misura e intensità maggiori rispetto ad altre aree della UE, con conseguente distorsione indebita della concorrenza all'interno del mercato unico.

3. Un punto meritevole di riflessione riguarda i costi ammissibili che nel *draft* corrispondono, in linea generale, ai costi d'investimento necessari per andare oltre le norme dell'Unione applicabili (art. 30 par.5). In particolare, al punto b) del citato par.5 art. 30, si stabilisce che, qualora i costi ammissibili degli investimenti per la tutela ambientale possono essere individuati con riferimento ad un investimento analogo che garantisce un livello di protezione ambientale minore (comunque nel rispetto della normativa dell'UE), soltanto il sovraccosto necessario a conseguire tale maggiore tutela ambientale costituisce il costo ammissibile. Tale disposizione pare di difficile applicabilità: come determinare, in un mercato con una pluralità di offerte di prodotti e/o servizi, il valore economico dell'investimento alternativo idoneo ad essere confrontato con il costo dell'investimento che garantisce una tutela ambientale superiore?

Proposta: chiarire meglio i criteri e/o il metodo per determinare il sovraccosto netto come costo ammissibile.

8) CONSIDERAZIONI FINALI

Alla luce della stretta connessione fra la qualità dell'aria e gli scenari meteo climatici – avversi alla dispersione degli inquinanti – e attività economiche presenti in un dato territorio, si sottolinea che Regione Lombardia ha sostenuto sforzi straordinari che hanno portato ad emissioni pro-capite e pro-PIL tra le più basse d'Europa. Ciò significa che le emissioni di SO₂, NO_x, CO, PM₁₀, PM_{2,5}, ma anche CO₂ (in termini equivalenti) di un abitante o di un'impresa del bacino padano sono inferiori a quelle della media europea, sia considerando l'UE27 ma anche restringendosi solo a quella UE15 che costituisce quella più ricca ed evoluta. Nonostante il sistema produttivo delle imprese del bacino padano siano molto efficiente dal punto di vista emissivo, dovuto alla riduzione delle emissioni specifiche, in rapporto alla ricchezza prodotta (rappresentata dal PIL), non si è ancora raggiunta la piena conformità ai limiti vigenti.

In considerazione dei notevoli sforzi sin qui compiuti, si ritengono necessari interventi straordinari che possano fronteggiare problematiche di elevata complessità ambientale, economica e giuridica.

La proposta che qui si sottopone all'attenzione è quella di passare da un'ottica di divieti contro le imprese ad un'ottica di incentivi concordati e limitati, ma diretti allo scopo e al perseguimento dell'obiettivo della qualità dell'aria, **che possano responsabilizzare direttamente le imprese agli obiettivi comunitari della crescita sostenibile all'interno di un quadro condiviso di tutela ambientale.**

Pertanto, fra gli obiettivi della strategia di "Europa 2020" e la normativa in materia di Aiuti di Stato, **le politiche per la qualità dell'aria** possono costituire un elemento significativo per indirizzare risorse economiche verso obiettivi ambiziosi e ben individuabili che l'UE si è data per migliorare la vita dei propri cittadini e contribuire ad un sistema economico più sostenibile, efficiente ed integrato.

Giugno 2013