

PART III: HORIZONTAL RULES

National Regional Aid 2007-2013¹

1 Introduction

- (1) On the basis of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement, state aid granted to promote the economic development of certain disadvantaged areas within the EEA may be considered to be compatible with the functioning of the EEA Agreement. This kind of state aid is known as national regional aid. National regional aid consists of aid for investment granted to large companies, or in certain limited circumstances, operating aid, which in both cases are targeted on specific regions in order to redress regional disparities. Increased levels of investment aid granted to small and medium-sized enterprises located within the disadvantaged regions over and above what is allowed in other areas are also considered as regional aid.
- (2) By addressing the handicaps of the disadvantaged regions, national regional aid promotes the economic, social and territorial cohesion of EEA States and the EEA as a whole. This geographical specificity distinguishes regional aid from other forms of horizontal aid, such as aid for research, development and innovation, employment, training or the environment, which pursue other objectives of common interest in accordance with Article 61(3) of the EEA Agreement, albeit sometimes with higher rates of aid in the disadvantaged areas in recognition of the specific difficulties which they face².
- (3) National regional investment aid is designed to assist the development of the most disadvantaged regions by supporting investment and job creation. It promotes the expansion and diversification of the economic activities of enterprises located in the less-favoured regions, in particular by encouraging firms to set up new establishments there.
- (4) The criteria applied by the EFTA Surveillance Authority (hereinafter “the Authority”) when examining the compatibility of national regional aid with the EEA Agreement under Articles 61(3)(a) and 61(3)(c) of the EEA Agreement have been codified in Chapter 25 of the Authority’s State Aid

¹ Chapter 25.B corresponds to Communication from the Commission - Guidelines on national regional aid for 2007-2013, OJ C 54, 4.3.2006, p.13.

² Regional top-ups for aid granted for such purposes are therefore not considered as regional aid.

Guidelines³ (hereinafter “the Guidelines”) which cover the period 2000-2006⁴. The specific rules governing aid for large investment projects have been codified in the Guidelines, Chapter 26.A Multisectoral Framework on Regional Aid for Large Investment Projects⁵. However, important political and economic developments since 1998, including the enlargement of the EEA on 1 May 2004 and the anticipated accession of Bulgaria and Romania, have created the need for a comprehensive review in order to prepare new guidelines which will apply from 2007 to 2013.

- (5) Regional aid can only play an effective role if it is used sparingly and proportionately and is concentrated on the most disadvantaged regions of the EEA. In particular the permissible aid ceilings should reflect the relative seriousness of the problems affecting the development of the regions concerned. Furthermore, the advantages of the aid in terms of the development of a less-favoured region must outweigh the resulting distortions of competition⁶. The weight given to the advantages of the aid is likely to vary according to the derogation applied, so that a greater distortion of competition can be accepted in the case of the most disadvantaged regions covered by Article 61(3)(a) than in those covered by Article 61(3)(c)⁷.
- (6) In certain very limited, well-defined cases, the structural handicaps of a region may be so severe that regional investment aid, together with a comprehensive horizontal aid regime may not be sufficient to trigger a process of regional development. Only in such cases may regional investment aid be supplemented by regional operating aid.
- (7) An increasing body of evidence suggests that there are significant barriers to the formation of new enterprises within the EEA which are more acute inside the disadvantaged regions. The Authority has therefore decided to introduce a new aid instrument in these guidelines to encourage small business start-ups in

³ The Authority’s guidelines are accessible on:

<http://www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/>.

⁴ Paragraph (7), Section 25.4 of the 1999 version of Chapter 25 National Regional Aid, was amended by the Chapter on aid for rescuing and restructuring firms in difficulty corresponding to the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 09.10.99, p.2).

⁵ Corresponding to Communication from the Commission – Multisectoral framework on regional aid for large investment projects, OJ C 70, 19.3.2002, p.8, as amended in OJ C 263, 1.11.2003, p. 3.

⁶ See in this respect the judgment of the European Court of Justice in Case 730/79, *Philip Morris* [1980], ECR 2671, paragraph 17 and in Case C-169/95, *Spain v Commission* [1997], ECR I-135, paragraph 20.

⁷ See in this respect the judgment of the European Court of First Instance in T-380/94, *AIUFFASS and AKT* [1996], ECR II-2169, paragraph 54.

disadvantaged regions with differentiated aid ceilings according to the regions concerned.

2 Scope

- (8) The Authority will apply these guidelines to regional aid granted in every sector of the economy falling within the scope of the EEA Agreement and the competences of the Authority. In addition, some of the sectors they cover are also subject to specific rules which take account of the particular situation of the sectors concerned and which may totally or partially derogate from these guidelines⁸.

As regards the steel industry, in accordance with its long-established practice, the Authority considers that regional aid to the steel industry as defined in Annex I is not compatible with the functioning of the EEA Agreement. This incompatibility also applies to large individual grants made in this sector to small and medium-sized enterprises within the meaning of Article 6 of Regulation (EC) No 70/2001⁹ or any successor regulation, which are not exempted by the same Regulation.

In addition, due to its specific characteristics, no regional investment aid may be granted in the synthetic fibres sector as defined in Annex II.

- (9) Aid may only be granted to firms in difficulties within the meaning of the Chapter of the Guidelines¹⁰ on aid for rescuing and restructuring firms in difficulty in accordance with the latter Chapter¹¹.
- (10) As a general rule, regional aid should be granted under a multi-sectoral aid scheme which forms an integral part of a regional development strategy with clearly defined objectives. Such a scheme may also enable the competent authorities to prioritise investment projects according to their interest for the region concerned. Where, exceptionally, it is envisaged to grant individual ad hoc aid to a single firm, or aid confined to one area of activity, it is the responsibility of the EFTA State to demonstrate that the project contributes

⁸ The sectors covered by special rules over and above those set out here are currently: transport and shipbuilding.

⁹ Regulation (EC) 70/2001 on the application of Articles 87 and 88 of the Treaty to State aid for small and medium-sized enterprises, as amended by Regulation (EC) 364/2004 incorporated into the EEA Agreement through Annex XV point 1f) by decision of the EEA Joint Committee No 131/2004 of 25.9.2004 (OJ L 64, 10.3.2005, p.57 and EEA Supplement No 12, p.42).

¹⁰ The Authority's guidelines are accessible on:
<http://www.eftasurv.int/fieldsOfWork/fieldStateAid/guidelines/>.

¹¹ In particular, aid granted to large or medium-sized enterprises during the restructuring period must always be notified individually to the Authority, even if it granted as part of an approved scheme.

towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition. If aid granted under a scheme appears to be unduly concentrated on a particular sector of activity, the Authority may review the scheme pursuant to Article 17 in Part II of Protocol 3 on the functions and powers of the Authority in the field of state aid to the Surveillance and Court Agreement (thereinafter “Protocol 3 to the Surveillance and Court Agreement”), and may propose, in line with Article 18(3) in Part II of the Protocol to abolish the scheme.

- (11) EFTA States do not have to notify national regional aid schemes which fulfil all the conditions laid down in the group exemption regulations to certain categories of horizontal state aid as incorporated in the EEA Agreement through Annex XV.

3 Demarcation of regions

3.1 Population coverage eligible for regional aid, 2007-2013

- (12) In the light of the principle of the exceptional nature of regional aid, the Authority considers that the total population coverage of assisted regions in the EFTA States must be substantially less than that of unassisted regions.
- (13) In view of the widely shared concerns about the distortive effects of investment aid for large companies, the Authority considers – in line with the European Commission and in accordance with the principle of ensuring a uniform implementation, application and interpretation of the EEA rules on state aid – that the overall population coverage of the regional aid guidelines for 2007 – 2013 should be limited to that which is necessary to allow coverage of the most disadvantaged regions, as well as a limited number of regions which are disadvantaged in relation to the national average in the EFTA State concerned.

3.2 The derogation in Article 61(3)(a)

- (14) Article 61(3)(a) provides that aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment may be considered compatible with the functioning of the EEA Agreement. As the Court of Justice of the European Communities has held, “the use of the words “abnormally” and “serious” in the exemption contained in Article 87 (3)(a) shows that it concerns only areas where the

economic situation is extremely unfavourable in relation to the Community as a whole”¹².

- (15) The Authority accordingly considers that the conditions laid down are fulfilled if the region, being a NUTS¹³ level II geographical unit, has a per capita gross domestic product (GDP), measured in purchasing power standards (PPS), of less than 75% of the EEA average¹⁴. There is however no NUTS level II region in the EFTA States that currently fulfils this condition¹⁵. Hence, no region in the EFTA States qualifies for the Article 61(3)(a) derogation.

3.3 The derogation in Article 61(3)(c)

- (16) The European Court of Justice, in case 248/84¹⁶, has expressed its views on the range of problems covered by the corresponding derogation in the EC Treaty and the reference framework for the analysis as follows: “The exemption in Article 87 (3)(c), on the other hand, is wider in scope inasmuch as it permits the development of certain areas without being restricted by the economic conditions laid down in Article 87 (3)(a), provided such aid “does not adversely affect trading conditions to an extent contrary to the common interest”. That provision gives the Commission power to authorise aid intended to further the economic development of areas of a Member State which are disadvantaged in relation to the national average”. In the Authority’s view, the same applies under Article 61(3)(c) of the EEA Agreement.

- (17) The regional aid covered by the derogation in Article 61(3)(c) must, however, form part of a well-defined regional policy of the EFTA State and adhere to the principle of geographical concentration. Inasmuch as it is intended for regions which are less disadvantaged than those to which Article 61(3)(a) relates, both the geographic scope of the exception and the aid intensity allowed must be strictly limited. This being so, only a small part of the

¹² Case 248/84, *Germany v Commission* [1987], ECR 4013, paragraph 19.

¹³ As defined in “*Statistical regions in the EFTA countries and in the candidate countries*”, 2001 edition by the Commission of the European Communities and the Statistical Office of the European Communities.

¹⁴ The underlying assumption being that the GDP indicator is capable of reflecting synthetically both the phenomena mentioned. In this and all subsequent references to GDP per capita in these guidelines, GDP is measured in terms of purchasing power standards. The GDP per capita of each region and the EEA average to be used in the analysis are determined by the Statistical office of the European Communities.

¹⁵ Should this situation change, the Authority would adopt new guidelines to take into account such a modification.

¹⁶ Footnote 12 supra.

national territory of an EFTA State may normally qualify for the aid in question.

- (18) So as to afford national authorities sufficient latitude when it comes to choosing eligible regions without jeopardizing the effectiveness of the system of checks and balances operated by the Authority in respect of this type of aid and the equal treatment of all EFTA States, the selection of the regions eligible under the derogation in question should be undertaken by a two-step process which consists, first, of the determination by the Authority of the maximum population coverage for each EFTA State for such aid, and, secondly, of the selection of eligible regions.

3.3.1 Determination of eligible national population coverage

- (19) The European Commission has in its corresponding guidelines defined the methodology to be applied in order to determine the eligible national population coverage within the Member States. This method entails the following steps:

- a) The EC Member States will first receive an allocation resulting from the application of the EC derogation corresponding to Article 61(3)(a)¹⁷.
- b) The EC Member States will automatically receive an allocation equivalent to the population of any regions which were eligible for aid under the EC derogation corresponding to Article 61(3)(a) but which no longer meet the conditions for eligibility under that Article due to their economic development (such regions are known as “economic development” regions¹⁸).
- c) In order to allow for the continued support of low population density regions, the EC Member States concerned will also receive an allocation

¹⁷ When determining the population that may be eligible for regional aid under the corresponding derogation in Article 61(3)1(3)(a), the European Commission will proceed in two steps: firstly, it will determine the population coverage by applying the 75% per capita GDP test described under paragraph (15). Secondly, it will take into account the “statistical effect” regions, i.e. regions for which the GDP per capita exceeds 75% of the EC-25 average solely because of the statistical effect of enlargement of the EC. These are regions at NUTS II level which have a GDP per capita of more than 75% of the EC-25 average but less than 75% of the EC-15 average. In its corresponding guidelines, the European Commission considers that such regions should continue to remain eligible for the EC derogation corresponding to Article 61(3)1(3)(a) on a transitional basis until 31 December 2010.

¹⁸ Such regions are to be distinguished from the “statistical effect” regions (see above, footnote (17)). These are regions which had a GDP per capita of less than 75% on an EC-15 basis and which, as a result of their economic development, no longer meet that condition on an EC-15 basis.

based on the population of low population density regions defined as NUTS III regions with less than 12.5 inhabitants per square kilometre.

d) Allocations under points (a) – (c) above are then added and the total amount is deducted from the overall population coverage of 42%¹⁹ for the EC-25 Member States. The balance is then distributed between the EC Member States by using a distribution key that takes into account the economic situation of such regions (the detailed formula for allocation of eligible population figures attributed to observed regional disparity is set out in Annex IV of the Commission Guidelines).

e) Finally, a safety net is applied to ensure that no EC Member State loses more than 50% of the coverage of its population under the 1998 guidelines.

(20) The EFTA States have certain specificities that must be taken into account when determining the eligible population coverage:

a) due to the relatively high GDP per capita in the EFTA States, no region qualifies for the derogation under Article 61(3)(a)²⁰,

b) many regions within the EFTA States are low population density regions;

c) finally, no region outside the low population density areas qualifies under the regional disparity method as set out in Annex IV of the Commission Guidelines.

(21) Due to such specificities, the Authority will fix the national population coverage on the basis of low population density regions according to Article 61(3)(c).

Norway has nine NUTS III regions with low population density making up 29.08% of the Norwegian population. Consequently, the national population ceiling for Norway is 29.08%.

Iceland is according to the NUTS classification system defined as such as a NUTS III region (as well as a NUTS I and a NUTS II region). The population

¹⁹ The European Commission has fixed the limit for the overall population coverage to 42% of the current EC-25 (due to a correction mechanism to ensure that none of the EC-15 Member States loses more than 50% of their population coverage under their current regional aid maps, the ceiling is fixed in practice to 43.1%).

²⁰ This should be understood as meaning that no region within the EFTA States (i) meets the 75% per capita GDP test described in paragraph (15) and (ii) qualifies either as a “statistical effect” region or as an “economic development” region.

density of Iceland is less than 12.5 inhabitants per square kilometre²¹. As referred to above (paragraphs (16) and (17)), the derogation in Article 61(3)(c) gives the Authority the power to authorize aid with the aim of furthering the development of regions in an EFTA State which are disadvantaged in relation to the national average. Furthermore, only a small part of the national territory should normally qualify for the aid in question. On this background and with a view to the special population pattern in Iceland, the Authority will determine the population coverage for Iceland on the basis of NUTS IV regions with low population density²². 31.6% of the Icelandic population lives in such regions having a population of less than 12.5 inhabitants per square kilometre. The national population coverage for Iceland is thus 31.6%.

Liechtenstein has no low population density regions and consequently no region eligible on that basis.

3.3.2 *Selection of eligible regions*

(22) The eligibility criteria for the selection of regions by the EFTA States must be sufficiently flexible to allow for the wide diversity of situations in which the granting of national regional aid may potentially be justified but at the same time they must be transparent and provide sufficient safeguards that the award of regional aid will not distort trade and competition to an extent contrary to the common interest. Accordingly, the Authority considers that the following regions may be eligible for selection by the EFTA States concerned for the award of regional investment aid pursuant to the derogation under Article 61(3)(c)²³:

- a) the low population density regions: such areas are made up essentially of NUTS-II geographic regions with a population density of less than 8 inhabitants per km², or NUTS-III geographic regions as concerns Norway and NUTS IV geographic regions as concerns Iceland²⁴ with a population density of less than 12.5 inhabitants per km²²⁵. However, a certain

²¹ The actual figure is 2.9 inhabitants per square kilometre.

²² According to the current NUTS classification, Iceland makes up, as such, one NUTS III region. In the event that this classification is amended by introducing more than one NUTS III region, the national population coverage will be assessed on the basis of the NUTS III level.

²³ Taking account of its small size, it is sufficient for Iceland that the regions designated have either a GDP per capita which is less than the EFTA average, or an unemployment rate which is higher than 115% of the national average, and have a minimum population of 10,000 inhabitants.

²⁴ In the rest of the text of these Guidelines, NUTS III regions should, in the case of Iceland, be read as NUTS IV regions where appropriate. Should the statistical classification of Iceland be amended as described in footnote 22, the text should read as NUTS III regions as appropriate.

²⁵ In order to prevent double counting, this criterion should be applied on a residual basis, after taking account of the relative wealth of the regions concerned.

flexibility is allowed in the selection of these areas, subject to the following limitations:

- flexibility in the selection of areas must not mean an increase in the population covered;
 - the NUTS III parts qualifying for flexibility must have a population density of less than 12.5 inhabitants per square kilometre;
 - they must be contiguous with NUTS III regions which satisfy the low population density test;
- b) regions which form contiguous zones with a minimum population of at least 100,000 and which are located within either NUTS-II or NUTS-III regions which have either a GDP per capita of less than the EEA average or which have an unemployment rate which is higher than 115% of the national average, (both calculated on the average of the most recent three years of Eurostat data);
- c) NUTS-III regions with less than 100,000 population which have either a GDP per capita of less than the EEA average **or** which have an unemployment rate which is higher than 115% of the national average, (both calculated on the average of the most recent three years of Eurostat data);
- d) islands and other regions categorised by similar geographical isolation²⁶ which have either a GDP per capita of less than the EEA average **or** which have an unemployment rate which is higher than 115% of the national average, (both calculated on the average of the most recent three years of Eurostat data);
- e) islands with fewer than 5,000 inhabitants and other communities with fewer than 5,000 inhabitants categorised by similar geographical isolation;
- f) NUTS-III regions or parts thereof which share a land border, or a sea border of less than 30 kilometres with a country which is not a Member State of the European Economic Area or EFTA.
- g) In duly justified cases, EFTA States may also designate other regions which form contiguous zones with a minimum population of at least 50,000 which are undergoing major structural change, or are in serious

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For example peninsulas and mountainous regions.

relative decline, when compared with other comparable regions. It will be the task of EFTA States which wish to use this possibility to demonstrate that the award of regional investment aid in the region concerned is justified, using recognised economic indicators and comparisons with the situation at EEA level.

- (23) In addition, in order to allow EFTA States greater flexibility to target very localised regional disparities, below the NUTS-III level, EFTA States may also designate other smaller areas which do not meet the conditions described above provided they have a minimum population of 20,000²⁷. It will be the task of EFTA States which wish to use this possibility to demonstrate that the areas proposed are relatively more in need of economic development than other areas in that region, using recognised economic indicators such as GDP per capita, employment or unemployment levels, local productivity or skill indicators. Regional aid will be approved by the Authority in these areas for SMEs, and the relevant SME bonus will also apply. However, because of the potential distortion of competition resulting from the spill-over effect into the more prosperous surrounding regions, the Authority will not approve aid for investments by large companies in these areas, or aids for investments with eligible expenses exceeding EUR 25 million.
- (24) Compliance with the total coverage allowed for each EFTA State will be determined by the actual population of the regions concerned, on the basis of the most recent recognised statistical information available.

4 Regional investment aid

4.1 Form of aid and aid ceilings

4.1.1 Form of aid

- (25) Regional investment aid is aid awarded for an initial investment project.
- (26) Initial investment means an investment in material and immaterial assets relating to;
- the setting-up of a new establishment;
 - the extension of an existing establishment;

²⁷ This minimum limit may be reduced in the case of islands and other areas categorised by similar geographical isolation.

- diversification of the output of an establishment into new, additional products;
- a fundamental change in the overall production process of an existing establishment.

“Material assets” means assets relating to land, buildings and plant/machinery. In case of acquisition of an establishment, only the costs of buying assets from third parties should be taken into consideration, provided the transaction has taken place under market conditions.

“Immaterial assets” means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge.

Replacement investment which does not meet any of these conditions is thus excluded from the concept²⁸.

- (27) The acquisition of the assets directly linked to an establishment may also be regarded as initial investment provided the establishment has closed or would have closed had it not been purchased, and is bought by an independent investor²⁹.
- (28) Regional investment aid is calculated either in reference to material and immaterial investment costs resulting from the initial investment project or to (estimated) wage costs for jobs directly created by the investment project³⁰.
- (29) The form of the aid is variable. It may, for example, take the form of grants, low-interest loans or interest rebates, state guarantees, the purchase of a shareholding or an alternative provision of capital on favourable terms, exemptions or reductions in taxes, social security or other compulsory charges, or the supply of land, goods or services at favourable prices.
- (30) It is important to ensure that regional aid produces a real incentive effect to undertake investments which would not otherwise be made in the assisted areas. Therefore aid may only be granted under aid schemes if the beneficiary has submitted an application for aid and the authority responsible for

²⁸ Replacement investment may however qualify as operating aid under certain conditions as set out in Section 5.

²⁹ Consequently, the sole acquisition of the shares of the legal entity of an enterprise does not qualify as initial investment.

³⁰ A job is deemed to be directly created by an investment project if it concerns the activity to which the investment relates and is created within three years of completion of the investment, including jobs created following an increase in the utilisation rate of the capacity created by the investment.

administering the scheme has subsequently confirmed in writing³¹ that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project³². An express reference to both conditions must also be included in all aid schemes³³. In the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on the Authority's approval of the measure, to award aid before work starts on the project. If work begins before the conditions laid down in this paragraph are fulfilled, the whole project will not be eligible for aid.

- (31) Where the aid is calculated on the basis of material or immaterial investment costs, or of acquisition costs in the case referred to in paragraph (27) above, to ensure that the investment is viable and sound and respecting the applicable aid ceilings, the 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 support³⁴.
- (32) Furthermore, in order to ensure that the investment makes a real and sustained contribution to regional development, aid must be made conditional, through the conditions attached to the aid, or its method of payment, on the maintenance of the investment in question in the region concerned for a minimum period of at least five years after its completion³⁵. In addition, where the aid is calculated on the basis of wage costs, the posts must be filled within three years of the completion of the works. Each of the jobs created through the investment must be maintained within the region concerned for a period of five years from the date the post was first filled. In the case of SMEs, EFTA States may reduce these five-year periods for the maintenance of an investment or jobs created to a minimum of three years.
- (33) The level of the aid is defined in terms of intensity compared with reference costs. All aid intensities must be calculated in terms of gross grant equivalents

³¹ In the case of aid which is subject to individual notification to and approval by the Authority, confirmation of eligibility must be made conditional on the Authority decision approving the aid.
³² "Start of work" means either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies.

³³ The only exception to these rules is in the case of approved tax aid schemes where a tax exemption or reduction is granted automatically to qualifying expenditure without any discretion on the part of the authorities.

³⁴ This is for example not the case for a subsidised loan, public equity capital loans or public participations which do not meet the market economy investor principle, state guarantees containing elements of aid, as well as public support granted within the scope of the *de minimis* rule.

³⁵ This rule shall not prevent the replacement of plant or equipment which has become out-dated within this five-year period due to rapid technological change, provided the economic activity is retained in the region concerned for the minimum period.

(GGE)³⁶. The aid intensity in gross grant equivalent is the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs. For aid which is individually notified to the Authority, the gross grant equivalent is calculated at the moment of notification. In other cases, the eligible investment costs are discounted to their value at the moment of the granting of the aid. Aid payable in several instalments shall be discounted to its value at the moment of its being notified or granted, as appropriate. The interest rate to be used for discounting purposes and to calculate the aid amount in a soft loan is the reference rate applicable at the time of grant. In cases where aid is awarded by means of tax exemptions or reductions on future taxes due, discounting of aid tranches takes place on the basis of the reference rates applicable at the various times the tax advantages become effective.

4.1.2 Aid ceilings (maximum aid intensities) for aid to large companies

- (34) The intensity of the aid must be adapted to take account of the nature and intensity of the regional problems that are being addressed. This means that the admissible aid intensities are from the outset less high in regions qualifying for exemption under Article 61(3)(c) than in those qualifying under Article 61(3)(a).
- (35) The enlargement of the EEA has led to greater disparities of wealth within the EEA resulting in the need to introduce a greater categorisation of the regions concerned. With a view to being consistent with the approach adopted in the European Community, the Authority has decided to apply the same methodology.
- (36) In the Article 61(3)(c) regions, the ceiling on regional aid must not exceed 15% GGE. This is reduced to 10% GGE in the case of regions with both more than 100% of average EEA GDP per capita and a lower unemployment rate

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The Authority is discontinuing its former practice of converting regional aid notified by EFTA States into net grant equivalents in order to take account of the judgment of the European Court of First Instance of 15 June 2000 in case T-298/97, *Alzetta*. In that case, the European Court of First Instance ruled: “*The Commission is not empowered, under the State aid monitoring system established by the Treaty, to take into consideration the incidence of tax on the amount of financial aid allocated when it assesses whether it is compatible with the Treaty. Such charges are not levied specifically on the aid itself but are levied downstream, and apply to the aid in question in the same way as to any income received. They cannot therefore be relevant when assessing the specific effect of the aid on trade and competition and, in particular, when estimating the benefit obtained by the recipients of such aid by comparison with competing undertakings which have not received such aid and whose income is also liable to tax.*” Furthermore, the Authority considers that the use of GGEs, which are also used to calculate the intensities of other types of State aid, will contribute to increasing the simplicity and transparency of the State aid control system, and also takes account of the increased proportion of State aid which is awarded in the form of tax exemptions.

than the EEA average, measured at NUTS-III level (based on averages for the last three years, using Eurostat data)³⁷.

(37) However, the low population density regions (corresponding to NUTS-III level or smaller) and NUTS-III regions or parts thereof which share a land border with a country which is not a Member State of the European Economic Area or EFTA, are always eligible for an aid intensity of 15% GGE.

4.1.3 *Bonuses for small and medium-sized enterprises*

(38) In the case of aid awarded to small and medium-sized enterprises³⁸, the ceilings in Section 4.1.2 may be increased by 20% GGE for aid granted to small enterprises and by 10% GGE for aid granted to medium-sized enterprises³⁹.

4.2 **Eligible expenses**

4.2.1 *Aid calculated on the basis of investment costs*

(39) Expenditures on land, buildings and plant/machinery⁴⁰ are eligible for aid for initial investment.

(40) For SMEs, the costs of preparatory studies and consultancy costs linked to the investment may also be taken into account up to an aid intensity of 50% of the actual costs incurred.

(41) In the event of an acquisition of the type referred to in paragraph (27), only the costs of buying assets⁴¹ from third parties should be taken into consideration⁴². The transaction must take place under market conditions.

(42) Costs related to the acquisition of assets other than land and buildings under lease can only be taken into consideration if the lease takes the form of

³⁷ By way of exception, a higher aid intensity may be permitted in the case of a NUTS-III region, or smaller, adjacent to an Article 61(3)(a) region if this is necessary to ensure that the differential between the two regions does not exceed 20 percentage points.

³⁸ Annex I of Commission Regulation (EC) No 364/2004 of 25 February 2004 amending Regulation (EC) 70/2001, OJ L 63, 28.2.2004, p.22 incorporated in the EEA Agreement through Annex XV point 1f) by decision of the EEA Joint Committee No 131/2004 of 25.09.2004 (OJ L 64, 10.3.2005, p.57 and EEA Supplement No 12, p.42), or any successor regulation.

³⁹ These bonuses do not apply to aid awarded in the transport sector.

⁴⁰ In the transport sector, expenditure on the purchase of transport equipment (movable assets) is not eligible for aid for initial investment.

⁴¹ Where the acquisition is accompanied by other initial investment, the expenditure relating to the latter should be added to the cost of the purchase.

⁴² In exceptional cases, the aid may alternatively be calculated by reference to the (estimated) wage costs for the jobs safeguarded or newly created by the acquisition. These cases have to be individually notified to the Authority.

financial leasing and contains an obligation to purchase the asset at the expiry of the term of the lease. 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 for large companies, and three years for SMEs.

- (43) Except in the case of SMEs and takeovers, the assets acquired should be new. In the case of takeovers, assets for whose acquisition aid has already been granted prior to the purchase should be deducted.
- (44) For SMEs, the full costs of investments in intangible assets by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge may always be taken into consideration. For large companies, such costs are eligible only up to a limit of 50% of the total eligible investment expenditure for the project.
- (45) In all cases, eligible intangible assets will be subject to the necessary conditions for ensuring that they remain associated with the recipient region eligible for the regional aid and, consequently, that they are not the subject of a transfer benefiting other regions, especially other regions not eligible for regional aid. To this end, eligible intangible assets will have to satisfy the following conditions in particular:
- they must be used exclusively in the establishment receiving the regional aid;
 - they must be regarded as amortizable assets;
 - they must be purchased from third parties under market conditions;
 - they must be included in the assets of the firm and remain in the establishment receiving the regional aid for at least five years (three years for SMEs).

4.2.2 *Aid calculated on the basis of wage costs*

- (46) As was indicated in Section 4.1.1, regional aid may also be calculated by reference to the expected wage costs⁴³ arising from job creation as a result of an initial investment project.

⁴³ The wage cost means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising the gross wage, before tax, and the compulsory social security contributions.

- (47) Job creation means a net increase in the number of employees⁴⁴ directly employed in a particular establishment compared with the average over the previous 12 months. Any jobs lost during that 12 month period must therefore be deducted from the apparent number of jobs created during the same period⁴⁵.
- (48) The amount of aid must not exceed a certain percentage of the wage cost of the person hired, calculated over a period of two years. The percentage is equal to the intensity allowed for investment aid in the area in question.

4.3 Aid for large investment projects

- (49) For the purpose of these guidelines, a “large investment project” is an “initial investment” as defined by these guidelines with an eligible expenditure above EUR 50 million⁴⁶. In order to prevent that a large investment project be artificially divided into sub-projects in order to escape the provisions of these guidelines, a large investment project will be considered to be a single investment project when the initial investment is undertaken in a period of three years by one or more companies and consists of fixed assets combined in an economically indivisible way⁴⁷.
- (50) To calculate whether the eligible expenditure for large investment projects reaches the various thresholds in these guidelines, the eligible expenditure to be taken into account is either the traditional investment costs or the wage cost, whichever is the higher.
- (51) In two successive Multisectoral frameworks on regional aid for large investment projects in 1998⁴⁸ and 2004⁴⁹, the Authority reduced the maximum

⁴⁴ The number of employees means the number of annual labour units, namely the number of persons employed full time in one year, part-time and seasonal work being ALU (Annual Labour Units) fractions.

⁴⁵ Such a definition holds true as much for an existing establishment as for a new establishment.

⁴⁶ The EUR 50 million must be calculated at prices and exchange rates on the date when the aid is granted, or in the case of large investment projects where individual notification is required, at prices and exchange rates at the date of the notification.

⁴⁷ To assess whether an initial investment is economically indivisible, the Authority will take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility will be assessed independently from ownership. This implies that to establish whether a large investment project constitutes a single investment project, the assessment should be the same irrespective of whether the project is carried out by one undertaking, by more than one undertaking sharing the investment costs or by more undertakings bearing the costs of separate investments within the same investment project (for example in the case of a joint venture).

⁴⁸ Inserted in Chapter 26.A Multisectoral framework on regional aid for large investment projects corresponding to Communication from the Commission – Multisectoral framework on regional aid for large investment projects (OJ C 107, 7.4.1998, p.7) deleted by the Authority Decision No. 371/04/COL of 15 December 2004.

⁴⁹ Inserted in Chapter 26.A.

aid intensities for large investment projects to limit distortions of competition. In the interests of simplification and transparency, the Authority has decided to integrate the provisions of the 2004 Multisectoral framework (MSF 2004) into the Regional aid guidelines for 2007-2013.

- (52) MSF-2004 will therefore cease to apply to aid awarded or notified⁵⁰ after 31 December 2006 and will be replaced by these guidelines⁵¹.

4.3.1 Increased transparency and monitoring of large investment projects

- (53) EFTA States are required to notify individually to the Authority any aid to be awarded to investment projects under an existing aid scheme if the aid proposed from all sources is more than the maximum allowable amount of aid that an investment with eligible expenditure EUR 100 million can receive under the scale and the rules laid down in paragraph (56)⁵².

The notification thresholds for different regions with the most commonly encountered aid intensities under these guidelines are summarised in the table below.

Aid intensity	10%	15%	20%	30%	40%	50%
Notification thresholds	€7.5 m	€11.25 m	€15.0 m	€22.5 m	€30.0 m	€37.5 m

- (54) Whenever regional aid is granted on the basis of existing aid schemes for non-notifiable large investment projects, EFTA States must, within 20 working days starting from the granting of the aid by the competent authority, provide the Authority with the information requested in the standard form laid down in Annex III. The Authority will make summary information available to the public through its website (www.eftasurv.int/fieldsOfWork/fieldStateAid).
- (55) EFTA States must maintain detailed records regarding the granting of aid for all large investment projects. Such records, which must contain all information

⁵⁰ Individually notifiable investment projects will be assessed in accordance with the rules in force at the time of notification.

⁵¹ Given the wide general scope of these guidelines, the Authority decided that it is not technically feasible to proceed with the establishment of a list of sectors where structural difficulties prevail.

⁵² Ad hoc individual aid must always be notified to the Authority. Because of its clear effect on the conditions of trade and competition, the need for a specific justification for the link with regional development applies with greater force to ad hoc individual aid for large individual investment projects.

necessary to establish that the maximum allowable aid intensity has been observed, must be maintained for 10 years from the date on which the aid was granted.

4.3.2 Rules for the assessment of large investment projects

(56) Regional investment aid for large investment projects is subject to an adjusted regional aid ceiling⁵³, on the basis of the following scale:

Eligible expenditure	Adjusted aid ceiling
Up to €50 million	100% of regional ceiling
For the part between €50 million and €100 million	50% of regional ceiling
For the part exceeding €100 million	34% of regional ceiling

Thus, the allowable aid amount for a large investment project will be calculated according to the following formula: maximum aid amount = $R \times (50 + 0.50 \times B + 0.34 \times C)$, where R is the unadjusted regional aid ceiling, B is the eligible expenditure between EUR 50 million and EUR 100 million, and C is the eligible expenditure above EUR 100 million. This is calculated on the basis of the official exchange rates prevailing on the date of the grant of aid, or in the case of aid subject to individual notification, on the date of notification.

(57) Where the total amount of aid from all sources exceeds 75% of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large enterprises in the approved regional aid map on the date the aid is to be granted, and where

- a) the aid beneficiary accounts for more than 25% of the sales of the product(s) concerned on the market(s) concerned before the investment or will account for more than 25 % after the investment, or
- b) the production capacity created by the project is more than 5% of the market measured using apparent consumption data⁵⁴ for the product

⁵³ The starting point for the calculation of the adjusted aid ceiling is always the maximum aid intensity allowed for aid for large enterprises in accordance with Section 25.B.4.1.2. No SME bonuses may be granted to large investment projects.

⁵⁴ Apparent consumption of the product concerned is production plus imports minus exports.

concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the European Economic Area's GDP,

the Authority will approve regional investment aid only after a detailed verification, following the opening of the procedure provided for in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement, that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effect on trade between Contracting Parties⁵⁵.

(58) The product concerned is normally the product covered by the investment project⁵⁶. When the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product. The relevant product market includes the product concerned and its substitutes considered to be such either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (through flexibility of the production installations).

(59) The burden of proof that the situations to which paragraphs (57) (a) and (b) refer do not apply, lies with the EFTA State⁵⁷. For the purpose of applying points (a) and (b), sales and apparent consumption will be defined at the appropriate level of the Prodcom classification⁵⁸, normally in the EEA, or if such information is not available or relevant, on the basis of any other generally accepted market segmentation for which statistical data are readily available.

4.4 Rules on the cumulation of aid

(60) The aid intensity ceilings laid down in Sections 4.1 and 4.3 above apply to the total aid:

- where assistance is granted concurrently under several regional schemes or in combination with ad hoc aid;

⁵⁵ The Authority may in due course draw up further guidance on the criteria it will take into account during this assessment.

⁵⁶ Where an investment project involves the production of several different products, each of the products needs to be considered.

⁵⁷ If the EFTA State demonstrates that the aid beneficiary creates a new product market, the tests laid down in paragraph (57) (a) and (b) above do not need to be carried out, and the aid will be authorised under the scale in paragraph (56).

⁵⁸ Council Regulation (EC) No 3924/91 of 19 December 1991 on the establishment of a Community survey of industrial production (OJ L 374, 31.12.1991, p.1). The Regulation was incorporated into the EEA Agreement (Annex XXI) by Joint Committee Decision No 7/94.

- whether the aid comes from local, regional, national or EEA sources.
- (61) Where aid calculated on the basis of material or immaterial investment costs is combined with aid calculated on the basis of wage costs, the intensity ceiling laid down for the region concerned must be respected⁵⁹.
- (62) Where the expenditure eligible for regional aid is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under the applicable rules.
- (63) Where the EFTA State lays down that state aid under one scheme may be combined with aid under other schemes, it must specify, in each scheme, the method by which it will ensure compliance with the conditions listed above.
- (64) Regional investment aid shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in these guidelines.

5 Operating aid⁶⁰

- (65) Regional aid aimed at reducing a firm's current expenses (operating aid) is normally prohibited. Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 61(3)(a) provided that (i) it is justified in terms of its contribution to regional development and its nature and (ii) its level is proportional to the handicaps it seeks to alleviate⁶¹. It is for the EFTA State to demonstrate the existence and importance of any handicaps. In addition, certain specific forms of operating aid can be accepted in the low population density regions and the least populated areas.
- (66) Operating aid should in principle only be granted in respect of a predefined set of eligible expenditures or costs⁶² and limited to a certain proportion of those costs.

⁵⁹ This condition is deemed to be met if the sum of the aid for the initial investment, expressed as a percentage of the investment, and of the job creation aid, expressed as a percentage of wage costs, does not exceed the most favourable amount resulting from application of either the ceiling set for the region in accordance with the criteria indicated at Section 25.B.4.1 or the ceiling set for the region in accordance with the criteria indicated at Section 25.B.4.3.

⁶⁰ Like other forms of regional aid, the granting of operating aid is always subject to the specific rules which may apply in particular sectors.

⁶¹ Operating aid takes the form in particular of tax exemptions or reductions in social security contributions which are not linked to eligible investment costs.

⁶² For example, replacement investments, transport costs or labour costs.

- (67) Because of the specific nature of financial and intra-group activities, as defined in Section J (codes 65, 66 and 67) and intra-group activities falling within the scope of Section K (code 74) of the European NACE Code, operating aid granted for these activities has only a very limited likelihood of promoting regional development but a very high risk of distorting competition, as stated in the Chapter of the Guidelines⁶³ on the application of state aid rules to measures relating to direct business taxation. The Authority will therefore not approve any operating aid to the financial services sector, or for intra-group activities under these guidelines unless such aid is granted under general schemes which are open to all sectors and which are designed to offset additional transport or employment costs. Operating aid intended to promote exports is likewise excluded.
- (68) Because it is intended to overcome delays and bottlenecks in regional development, except as provided for in paragraphs (69) and (70), operating aid should always be temporary and reduced over time, and should be phased out when the regions concerned achieve real convergence with the wealthier areas of the EEA⁶⁴.
- (69) In derogation from the previous paragraph, operating aid which is not both progressively reduced and limited in time may only be authorised in the least populated regions, in so far as it is intended to prevent or reduce the continuing depopulation of these regions⁶⁵. The least populated regions represent or belong to regions at NUTS-II level for Norway and NUTS IV level for Iceland⁶⁶ with a population density of 8 inhabitants per km² or less and extend to adjacent and contiguous smaller areas meeting the same population density criterion.
- (70) In addition, in the low population density regions, aid which is not both progressively reduced and limited in time and which is intended partly to offset additional transport costs may be authorised under the following conditions:

⁶³ The Authority's guidelines are accessible on:

<http://www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/>.

⁶⁴ This principle of degressivity must also be respected when new operating aid schemes are notified to replace existing ones. However, flexibility as regards the application of this principle may be permitted in the case of operating aid schemes designed to address the geographical handicaps of particular areas located within Article 61(3)(a) regions.

⁶⁵ It is the task of the EFTA State to demonstrate that the aid proposed is necessary and appropriate to prevent or reduce continuing depopulation.

⁶⁶ In the event that there is an amendment of the NUTS classification in Iceland, see footnote 22, the applicable NUTS level should be amended accordingly.

- aid may serve only to compensate for the additional cost of transport, taking into account other schemes of assistance to transport. While the amount of aid may be calculated on a representative basis, systematic overcompensation must be avoided;
- aid may be given only in respect of the extra cost of transport of goods produced in the low population density regions inside the national borders of the country concerned. It must not be allowed to become export aid. No aid may be given towards the transport or transmission of the products of businesses without an alternative location (products of the extractive industries, hydroelectric power stations, etc.);
- the aid must be objectively quantifiable in advance, on the basis of an aid-per-ton/kilometre ratio, and there must be an annual report drawn up which, among other things, shows the operation of the ratio or ratios;
- the estimate of additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets using that form of transport; external costs to the environment should also be taken into account.

(71) In all cases, the need for and level of operating aid should be regularly re-examined to ensure its long-term relevance to the region concerned. The Authority will therefore only approve operating aid schemes for the duration of these guidelines.

(72) In order to verify the effects on trade and competition of operating aid schemes, EFTA States will be required to provide each year a single report in respect of each NUTS-II region⁶⁷ in which operating aid is granted which provides a breakdown of total expenditure, or estimated income forgone, for each operating aid scheme approved in the region concerned and identifies the ten largest beneficiaries of operating aid in the region concerned⁶⁸, specifying the sector(s) of activity of the beneficiaries and the amount of aid received by each.

6 Aid for newly created small enterprises

(73) While newly created small enterprises encounter difficulties throughout the EEA, it appears that the economic development of the assisted regions is

⁶⁷ For Iceland, the NUTS level as appropriate.

⁶⁸ In terms of the amount of aid received.

hindered by relatively low levels of entrepreneurial activity and in particular by even lower than average rates of business start-ups. It therefore appears necessary to introduce a new form of aid, which can be granted in addition to regional investment aid, in order to provide incentives to support business start-ups and the early stage development of small enterprises in the assisted areas.

- (74) In order to ensure that it is effectively targeted, it appears that this type of aid should be graduated according to the difficulties faced by each category of region. Furthermore, in order to avoid an unacceptable risk of distortions of competition, including the risk of crowding-out existing enterprises, the aid should, for an initial period at least, be strictly limited to small enterprises, limited in amount and degressive.
- (75) The Authority will accordingly approve aid schemes which provide aid up to a total of EUR 1 million per enterprise⁶⁹ for small enterprises with their economic activity in regions eligible for the derogation in Article 61(3)(c). Annual amounts of aid awarded for newly created small enterprises must not exceed 33% of the above mentioned total amounts of aid per enterprise.
- (76) The eligible expenses are legal, advisory, consultancy and administrative costs directly related to the creation of the enterprise, as well as the following costs, insofar as they are actually incurred within the first five years of the creation of the enterprise thereafter⁷⁰:
- interests on external finance and a dividend on own capital employed not exceeding the reference rate;
 - fees for renting production facilities/equipment;
 - energy, water, heating, taxes (other than VAT and corporate taxes on business income) and administrative charges;
 - depreciation, fees for leasing production facilities/equipment as well as wage costs including compulsory social charges may also be included

⁶⁹ Eligible enterprises are small enterprises within the meaning of Article 2 of Annex 1 to European Commission Regulation (EC) No 364/2004 incorporated in the EEA Agreement through Annex XV point 1f) by decision of the EEA Joint Committee No 131/2004 of 25.09.2004 (OJ L 64, 10.3.2005, p.57 and EEA Supplement No 12, p.42) or any successor regulation, which are autonomous within the meaning of Article 3 of the Annex to Commission Regulation No 364/2004 and which have been created less than five years ago.

⁷⁰ VAT and direct business profit/income taxes are not included in the eligible expenses.

provided that the underlying investments or job creation and recruitment measures have not benefited from other forms of aid.

- (77) The aid intensity may not exceed 25% of eligible expenses incurred in the first three years after the creation of the enterprise, and 15% in the two years thereafter.
- (78) These intensities are increased by 5% in regions with a population density of less than 12.5 inhabitants/km² and in small islands with a population of less than 5,000, and other communities of the same size suffering from similar isolation.
- (79) The EFTA State shall put in place the necessary system to ensure that the upper limits for the amount of aid and the relevant aid intensity in relation to the eligible costs concerned are not exceeded. In particular, the aid provided for in this Chapter shall not be cumulated with other public support (including de minimis support) in order to circumvent the maximum aid intensities or amounts laid down.
- (80) Granting aid designed exclusively for newly created small enterprises may produce perverse incentives for existing small enterprises to close down and re-open in order to receive this type of aid. EFTA States should be aware of this risk and should design aid schemes in such a way as to avoid this problem, for example by placing limits on applications from owners of recently closed firms.

7 Regional aid maps and declaration of compatibility

- (81) The regions of an EFTA State eligible for regional investment aid under the derogations and the ceilings on the intensity of aid for initial investment⁷¹ approved for each region together form an EFTA State's regional aid map. The regional aid map also defines the regions eligible to grant enterprise aid. Operating aid schemes are not covered by the regional aid maps, and are assessed on a case by case basis on the basis of a notification by the EFTA State concerned pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.
- (82) The European Court of Justice has ruled that the 'decisions' by which the European Commission adopts the regional aid maps for each EC Member

⁷¹ As adjusted in accordance with paragraph (56) in the case of individually notifiable aid for large investment projects.

State should be construed as forming an integral part of the guidelines on regional aid and as having binding force only on condition that they have been accepted by EC Member States⁷². In the Authority's opinion, the same applies to the Authority's decisions.

- (83) Furthermore, it should be recalled that the regional aid maps also define the scope of any group exemption exempting regional aid from the notification obligation under Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, whether such aid is granted on the basis of Regulation (EC) 70/2001⁷³, or on the basis of a possible future exemption for other forms of regional aid.
- (84) Under these guidelines, depending on the socio-economic situation of the EFTA States, the regional aid map will include regions which are to be designated by EFTA States for eligibility for regional aid in accordance with Article 61(3)(c) up to the limit for population coverage determined in accordance with Section 3.3.1.
- (85) Provided they respect the conditions set out in these guidelines, it is the responsibility of the EFTA States themselves to decide whether they wish to grant regional investment aid and up to what level. As soon as possible after the adoption of these guidelines, each EFTA State should accordingly notify to the Authority in accordance with Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, a single regional aid map covering its entire national territory.
- (86) The Authority will examine the notifications in accordance with the procedure set out in Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement. At the conclusion of its examination, it will publish the approved regional aid maps in the EEA Section of and the EEA Supplement to the Official Journal of the European Union. These maps will take effect on 1 January 2007, or their date of approval by the Authority if later, and will be considered an integral part of the present guidelines.

⁷² Judgment of the European Court of Justice of 18 June 2002 in case C-242/00 *Germany v. Commission*.

⁷³ Commission Regulation (EC) 70/2001 on the application of Articles 87 and 88 of the Treaty to State aid for small and medium-sized enterprises, as amended by Regulation (EC) 364/2004 incorporated into the EEA Agreement through Annex XV point 1f) by decision of the EEA Joint Committee No 131/2004 of 25.09.2004 (OJ L 64, 10.3.2005, p.57 and EEA Supplement No 12, p.42) amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63, 28.2.2004, p.22).

- (87) The notification should clearly identify the regions proposed for eligibility under Article 61(3)(c), and the aid intensities envisaged for large companies, taking account of adjustments in the regional aid ceiling for large investment projects.
- (88) Detailed supporting information should be given to explain the designation of the Article 61(3)(c) regions other than the economic development, the low population density and the border regions, including the detailed identification of the regions concerned, population data, information on GDP and unemployment levels in the regions concerned, and any other relevant information.
- (89) In order to ensure continuity, which is essential for long-term regional development, the list of regions notified by EFTA States should in principle apply throughout the period 2007-2013. It may, however, be subject to mid-term review in 2010⁷⁴. Any EFTA State wishing to amend the list of regions eligible for aid under Article 61(3)(c) or the applicable aid intensities must submit a notification to the Authority before 1 April 2010 at the latest. Any changes of region in this context may not exceed 50% of the total coverage allowed for the EFTA State under Article 61(3)(c). Regions which lose their eligibility for regional aid coverage as a result of this mid-term review will not be eligible for any transitional support. Moreover, EFTA States may at any time notify to the Authority a request to add further regions to the list until such time as the relevant population coverage is reached.

8 Entry into force, Implementation, Transparency and Review

- (90) The Authority intends to apply these guidelines to all regional aid to be granted after 31 December 2006. Regional aid awarded or to be granted before 2007 will be assessed in accordance with the 1999 guidelines on national regional aid.
- (91) Since they must be coherent with the regional aid map, notifications of regional aid schemes, or ad hoc aid to be granted after 31 December 2006, cannot normally be considered complete until the regional aid map has been adopted for the EFTA State concerned in accordance with the arrangements described in Section 7. Accordingly, the Authority will not normally examine notifications of regional aid schemes which are to apply after 31 December

⁷⁴ The provisions regarding mid-term review should not prevent amending the national population coverage for Iceland before 2010 should the NUTS classification in that country be amended as provided for in footnote 22 above before that date.

2006, or ad hoc aid to be granted after that date, until the adoption of the regional aid map for the EFTA State concerned⁷⁵: The same applies to aid schemes for newly created small enterprises covered by Section 6 of these guidelines.

(92) The Authority considers that the implementation of these guidelines will lead to substantial changes in the rules applicable to regional aid throughout the EFTA States. Furthermore, it appears necessary to review the continuing justification for and effectiveness of all regional aid schemes including both investment aid and operating aid schemes. For these reasons, the Authority will propose the following appropriate measures to EFTA States pursuant to Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement:

- without prejudice to Article 10 (2) of Regulation (EC) 70/2001 on the application of Articles 87 and 88 of the Treaty to state aid for small and medium-sized enterprises, as amended by Regulation (EC) 364/2004 incorporated into the EEA Agreement through Annex XV point 1f) by decision of the EEA Joint Committee No 131/2004 of 25.09.2004 (OJ L 64, 10.3.2005, p.57 and EEA Supplement No 12, p.42), and to Article 11(2) of Regulation (EC) 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to state aid for employment incorporated into the EEA Agreement through Annex XV 1g) by decision of the EEA Joint Committee No 83/2003 of 20.6.2003 (OJ L 257, p.39, 9.10.2003, Suppl. No 51, p.250), EFTA States shall limit the application in time of all existing regional aid schemes to aid to be granted on or before 31 December 2006;
- where environment aid schemes allow regional investment aid to be granted for environment investments pursuant to footnote 31 of Chapter 15 of the Guidelines⁷⁶, EFTA States shall amend the relevant schemes in order

⁷⁵ The Authority informs the EFTA States that in order to reduce that burden of the obligation of notification to the maximum extent possible, the European Commission has indicated that it intends to make use of its powers to exempt from notification under Article 88 (3) of the Treaty all transparent regional investment aid schemes which comply with the national regional aid map approved for the Member State concerned. Under such a regime ad hoc individual aid and operating aid schemes would not be exempt from notification. Moreover, the current information and individual notification requirements for large individual aid projects would continue to apply, including in the case of aid which is granted under exempted schemes. However, until the European Commission has formally adopted such a regulation and until the latter has been incorporated in the EEA Agreement, these types of investment aid schemes are subject to the general notification requirements as stipulated in Article 1(3) in Part I and Article 2 in Part II of Protocol 3 to the Surveillance and Court agreement.

⁷⁶ The Authority's guidelines are accessible on:
<http://www.eftasurv.int/fieldsofwork/fieldstateaid/guidelines/>.

to ensure that aid may only be granted after 31 December 2006 if it complies with the regional aid map in force on the date the aid is granted;

- EFTA States shall as necessary amend other existing aid schemes in order to ensure that any regional bonuses such as those allowed for training aid, aid for research and development or environment aid may only be granted after 31 December 2006 in areas which are eligible for support under Article 61(3)(c) in accordance with the regional aid map adopted by the Authority in force on the date the aid is granted.

The Authority will invite EFTA States to confirm their acceptance of these proposals within one month.

- (93) In addition, the Authority considers that further measures are necessary to improve the transparency of regional aid. In particular, it appears necessary to ensure that the EFTA States, economic operators, interested parties and indeed the Authority itself should have easy access to the full text of all applicable regional aid schemes in the EFTA States. The Authority considers that this can easily be achieved through the establishment of linked internet sites. For this reason, when examining regional aid schemes, the Authority will systematically seek an undertaking from the EFTA State that the full text of the final aid scheme will be published on the internet and that the internet address of the publication will be communicated to the Authority. Projects for which expenses were incurred before the date of publication of the scheme will not be eligible for regional aid.
- (94) The Authority may decide to review or amend these guidelines at any time if this should be necessary for reasons associated with competition policy or in order to take account of other EEA policies and international commitments.

Annex I

Definition of the steel industry

The steel industry, for the purposes of these guidelines consists of the undertakings engaged in the production of the steel products listed below:

Product	Combined Nomenclature Code^(*)
Pig iron	7201
Ferro-alloys	7202 11 20, 7202 11 80, 7202 99 11
Ferrous products obtained by direct reduction of iron ore and other spongy ferrous products	7203
Iron and non-alloy Steel	7206
Semi-finished products of iron or non-alloy steel	7207 11 11; 7207 11 14; 7207 11 16; 7207 12 10; 7207 19 11; 7207 19 14; 7207 19 16; 7207 19 31; 7207 20 11; 7207 20 15; 7207 20 17; 7207 20 32; 7207 20 51; 7207 20 55; 7207 20 57; 7207 20 71
Flat rolled products of iron and non-alloy steel	7208 10 00; 7208 25 00; 7208 26 00; 7208 27 00; 7208 36 00; 7208 37; 7208 38; 7208 39; 7208 40; 7208 51; 7208 52; 7208 53; 7208 54; 7208 90 10; 7209 15 00; 7209 16; 7209 17; 7209 18; 7209 25 00; 7209 26; 7209 27; 7209 28; 7209 90 10; 7210 11 10; 7210 12 11; 7210 12 19; 7210 20 10; 7210 30 10; 7210 41 10; 7210 49 10; 7210 50 10; 7210 61 10; 7210 69 10; 7210 70 31; 7210 70 39; 7210 90 31; 7210 90 33; 7210 90 38; 7211 13 00; 7211 14; 7211 19; 7211 23 10; 7211 23 51; 7211 29 20; 7211 90 11; 7212 10 10; 7212 10 91; 7212 20 11; 7212 30 11; 7212 40 10; 7212 40 91; 7212 50 31; 7212 50 51; 7212 60 11; 7212 60 91
Bars and rods, hot rolled, in irregularly wound coils, of iron or non alloy steel	7213 10 00; 7213 20 00; 7213 91; 7213 99
Other bars and rods or iron and non-alloy steel	7214 20 00; 7214 30 00; 7214 91; 7214 99; 7215 90 10
Angles, shapes and sections of iron or non-alloy steel	7216 10 00; 7216 21 00; 7216 22 00; 7216 31; 7216 32; 7216 33; 7216 40; 7216 50; 7216 99 10
Stainless Steel	7218 10 00; 7218 91 11; 7218 91 19; 7218 99 11; 7218 99 20
Flat-rolled products of stainless steel	7219 11 00; 7219 12; 7219 13; 7219 14; 7219 21; 7219 22; 7219 23 00; 7219 24 00; 7219 31 00; 7219 32; 7219 33; 7219 34; 7219 35; 7219 90 10; 7220 11 00; 7220 12 00; 7220 20 10; 7220 90 11; 7220 90 31

Product	Combined Nomenclature Code^(*)
Bars and rods of stainless steel	7221 00; 7222 11; 7222 19; 7222 30 10; 7222 40 10; 7222 40 30
Flat rolled products of other alloy steel	7225 11 00; 7225 19; 7225 20 20; 7225 30 00; 7225 40; 7225 50 00; 7225 91 10; 7225 92 10; 7225 99 10; 7226 11 10; 7226 19 10; 7226 19 30; 7226 20 20; 7226 91; 7226 92 10; 7226 93 20; 7226 94 20; 7226 99 20
Bars and rods of other alloys steels	7224 10 00; 7224 90 01; 7224 90 05; 7224 90 08; 7224 90 15; 7224 90 31; 7224 90 39; 7227 10 00; 7227 20 00; 7227 90; 7228 10 10; 7228 10 30; 7228 20 11; 7228 20 19; 7228 20 30; 7228 30 20; 7228 30 41; 7228 30 49; 7228 30 61; 7228 30 69; 7228 30 70; 7228 30 89; 7228 60 10; 7228 70 10; 7228 70 31; 7228 80
Sheet piling	7301 10 00
Rails and cross ties	7302 10 31; 7302 10 39; 7302 10 90; 7302 20 00; 7302 40 10; 7302 10 20
Seamless tubes, pipes and hollow profiles	7303; 7304
Welded iron or steel tubes and pipes, the external diameter of which exceeds 406.4 mm	730577305

* OJ L 279, 23.10.2001, p.1.

Annex II

Definition of the synthetic fibres industry

The synthetic fibres industry is defined, for the purposes of these guidelines, as:

- extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses, or
- polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used, or
- 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.

Annex III

Form of the provision of summary information for aid for large investment projects requested in paragraph (54)

1. Aid in favour of (name of the company/companies receiving the aid):
2. Aid scheme reference (Authority reference of the existing scheme or schemes under which the aid is awarded):
3. Public entity/entities providing the assistance (name and co-ordinates of the granting authority or authorities):
4. EFTA State where the investment takes place:
5. Region (NUTS-III level) where the investment takes place:
6. Municipality (previously NUTS-V level) where the investment takes place:
7. Type of project (setting-up of a new establishment, extension of existing establishment, diversification of output of existing establishment into new, additional products, fundamental change in the overall production process of an existing establishment):
8. Products manufactured or services provided on the basis of the investment project (with Prodcom/Nace nomenclature or CPA nomenclature for projects in the service sectors):
9. Short description of investment project:
10. Discounted eligible cost of investment project (in EUR):
11. Discounted aid amount (gross) in EUR:
12. Aid intensity (% in GGE):
13. Conditions attached to the payment of the proposed assistance (if any):
14. Planned start and end date of the project:
15. Date of award of the aid: