

Guidelines on regional state aid (*)

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(*) These Guidelines correspond to the European Commission Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1). The Commission Guidelines do not qualify as legislative instruments and therefore do not have to be incorporated into the EEA Agreement by the EEA Joint Committee.

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1. INTRODUCTION

1. The EFTA Surveillance Authority (“ESA”) may consider the following types of state aid compatible with the functioning of the EEA Agreement, on the basis of Article 61(3)(a) and (c) of the EEA Agreement:
 - a) State aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment; and
 - b) State aid to facilitate the development of certain economic areas within the European Economic Area (“EEA”) ⁽¹⁾.

These types of state aid are known as regional aid.

2. These Guidelines set out the conditions under which regional aid may be considered to be compatible with the functioning of the EEA Agreement. They also set out the criteria for identifying the areas that fulfil the conditions of compatibility under Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement.
3. The primary objective of state aid control in the field of regional aid is to ensure that aid for regional development and territorial cohesion ⁽²⁾ does not to an undue extent adversely affect trading conditions between EEA States ⁽³⁾. In particular, it aims at preventing subsidy races that may occur when EEA States seek to attract or retain businesses in assisted areas of the EEA, and to limit the effects of regional aid on trade and competition to the minimum necessary.
4. The objective of regional development and territorial cohesion distinguishes regional aid from other forms of aid, such as aid for research, development and innovation, employment, training, energy or for environmental protection, which pursue other objectives of economic development under Article 61(3) of the EEA Agreement. In some circumstances, higher aid intensities may be allowed for those other types of aid when granted to undertakings established in assisted areas, in recognition of the specific difficulties they face in these areas ⁽⁴⁾.
5. Regional aid can only play an effective role if it is used sparingly and proportionately and is focused on assisted areas in the EEA ⁽⁵⁾. In particular, the permissible aid ceilings should reflect the extent of the problems affecting the development of the areas concerned. The advantages of the aid in terms of the development of an assisted area

⁽¹⁾ Areas eligible for regional aid under Article 61(3)(a) of the EEA Agreement, commonly referred to as ‘a’ areas, tend to be the most disadvantaged within the EEA in terms of economic development. Areas eligible under Article 61(3)(c) of the EEA Agreement, referred to as ‘c’ areas, also tend to be disadvantaged, but to a lesser extent. Due to the relatively high GDP per capita in the EEA EFTA States, no region in these States currently qualifies for the derogation under Article 61(3)(a) of the EEA Agreement.

⁽²⁾ [...]

⁽³⁾ These Guidelines concern aid granted within the EEA by the EEA EFTA States, namely Iceland, Liechtenstein and Norway. When mentioning “Member States”, ESA includes the territory of Northern Ireland as agreed within the “Protocol on Ireland/Northern Ireland” annexed to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

⁽⁴⁾ Regional top-ups for aid granted for such purposes are therefore not considered as regional aid.

⁽⁵⁾ EEA EFTA States can identify these areas in a regional aid map, following the conditions laid down in Section 7.

must outweigh the distortion of competition and trade that it may result in ⁽⁶⁾. The weight given to the positive effects of the aid is likely to vary according to the derogation under Article 61(3) of the EEA Agreement, which means that a greater distortion of competition can be accepted in the most disadvantaged areas covered by Article 61(3)(a) than in areas covered by Article 61(3)(c) ⁽⁷⁾.

6. Furthermore, regional aid can only be effective in promoting or facilitating the economic development of assisted areas provided that it is awarded to stimulate additional investment or economic activity in those areas. In certain very limited, well-identified cases, the obstacles faced by these areas in attracting or maintaining economic activity may be so severe or permanent that investment aid may not be sufficient to enable the area to develop. In this situation may regional investment aid be supplemented by regional operating aid.
7. In 2019, the European Commission (“the Commission”) launched an evaluation of the regional aid framework to assess whether its regional aid guidelines were still fit for purpose. The results ⁽⁸⁾ showed that, in principle, the rules work well, but they require some improvements to reflect economic developments. In addition, the ‘European Green Deal’ ⁽⁹⁾, ‘A new industrial strategy for Europe’ ⁽¹⁰⁾ and ‘Shaping Europe’s digital future’ ⁽¹¹⁾, may be taken into account by the Commission when assessing the impact of regional aid, which require making some amendments to the rules. In this context, other state aid rules are also undergoing a revision process and the Commission is paying particular attention to the scope of each of the thematic guidelines and also to the possibilities to potentially combine different kinds of aid for the same investment. As such, support for initial investments for new environmentally friendly technologies that contribute to the decarbonisation of production processes in industry, including energy-intensive industries such as steel, can be assessed, depending on their exact features, in particular under the state aid rules for research, development and innovation or for environmental protection and energy. Regional aid can also be combined with other types of aid. It is possible, for example, for the same investment project, to combine regional aid with support under the state aid rules for environmental protection and energy if that investment project facilitates the development of an assisted area and at the same time increases the level of environmental protection to an extent that the investment or part of it qualifies for support under both thematic rules and the provisions of both sets of rules are complied with. In this way, EEA States can

⁽⁶⁾ See judgment of 17 September 1980, *Philip Morris Holland BV v Commission of the European Communities*, Case 730/79, EU:C:1980:209, paragraph 17, and judgment of 14 January 1997, *Spain v Commission*, C-169/95, EU:C:1997:10, paragraph 20.

⁽⁷⁾ See judgment of 12 December 1996, *AIUFFASS and AKT v Commission*, T-380/94, EU:T:1996:195, paragraph 54.

⁽⁸⁾ See the Commission staff working document on the results of the Fitness Check of 30 October 2020 – SWD(2020) 257 final.

⁽⁹⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 December 2019 – COM (2019) 640 final.

⁽¹⁰⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 10 March 2020 – COM (2020) 102 final.

⁽¹¹⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 19 February 2020 – COM (2020) 67 final.

incentivise reaching both objectives in an optimal way, while avoiding overcompensation. [...] ⁽¹²⁾.

- 7a. ESA notes that certain policy instruments and legislative provisions referred to by the Commission may not be incorporated into the EEA Agreement. While taking into account the particular legislative situation of the EEA EFTA States, ESA will nonetheless, with a view to ensuring uniform application of state aid provisions, and equal conditions of competition throughout the EEA, generally apply the same points of reference as the Commission Guidelines when assessing the compatibility of regional aid with the functioning of the EEA Agreement (*). The present Guidelines consequently include references to European Union legislation and policy documents found in the Commission Guidelines (*). This does not imply that the EEA EFTA States are obliged to comply with legislation which has not been implemented into the EEA Agreement.
8. In response to the economic disturbance created by the COVID-19 pandemic, the Commission has put in place targeted instruments, such as the Temporary Framework for State aid measures ⁽¹³⁾. The pandemic may have more long-lasting effects in certain areas than in others. At this point in time, it is too early to predict the impact of the pandemic over the mid- to long- term and to identify which areas will be particularly affected. ESA therefore plans a mid-term review of the regional aid maps in 2023, which will take into account the latest available statistics.

2. SCOPE AND DEFINITIONS

2.1. Scope of regional aid

9. The compatibility conditions set out in these Guidelines are applicable both to notifiable regional aid schemes and notifiable individual aid.
10. These Guidelines do not cover state aid granted to the steel ⁽¹⁴⁾, lignite ⁽¹⁵⁾ and coal ⁽¹⁶⁾ sectors.

⁽¹²⁾ [...].

(*) Based on the Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund – COM (2020) 22 final, the Commission also included in its Guidelines specific provisions to facilitate support in the context of the Just Transition Fund (“JTF”) in line with cohesion principles. These provisions are not included in the present Guidelines as, at the time of their adoption, it was not sufficiently clear how the JTF would be dealt with in the context of the EEA Agreement to stipulate conditions. Depending on the future development, ESA may consider revising the present Guidelines on these and other points.

(*) Some text has nevertheless been deleted compared with the Commission Guidelines. These deletions include text referring to legal instruments and provisions which are not part of, or have no equivalent in, the EEA Agreement, and text where, as mentioned in the preceding footnote, it is too unclear at this point what the implications of the legal instrument referred to will be in the context of the EEA Agreement. Where text has been deleted, it has been replaced with [...] as placeholder.

⁽¹³⁾ OJ C 91I, 20.3.2020, p. 1.

⁽¹⁴⁾ As defined in Annex VI.

⁽¹⁵⁾ ‘Lignite’ means low-rank C or Ortho-lignite and low-rank B or Meta lignite as defined by the international codification system for coal established by the United Nations Economic Commission for Europe.

⁽¹⁶⁾ ‘Coal’ means high-grade, medium grade and low grade category A and B coal as defined by the international codification system for coal established by the United Nations Economic Commission

11. ESA will apply the principles set out in these Guidelines to regional aid in all other sectors of economic activity falling within the scope of the EEA Agreement, apart from sectors that are subject to specific state aid rules, in particular, in[...] ⁽¹⁷⁾ ⁽¹⁸⁾ transport ⁽¹⁹⁾, broadband ⁽²⁰⁾, and energy ⁽²¹⁾, save where state aid is granted in those sectors as part of a horizontal regional operating aid scheme.
12. ESA will apply the principles set out in these Guidelines in respect of processing and marketing of agricultural products into non-agricultural products ⁽²²⁾.
13. Large enterprises tend to be less affected than small and medium sized enterprises (SMEs) by regional constraints to investing or maintaining economic activity in an assisted area. Firstly, large enterprises can more easily obtain capital and credit on global markets and are less constrained by the more limited offer of financial services in assisted areas. Secondly, investments by large enterprises can produce economies of scale that reduce location-specific initial costs and, in many respects, are not tied to the area in which the investment takes place. Thirdly, large enterprises that plan investments usually have considerable bargaining power vis-à-vis the authorities, which may lead to aid being awarded without need or due justification. Lastly, large enterprises are more likely to be significant players on the market concerned and, as a result, the investment for which the aid is awarded may distort competition and trade on the internal market.
14. Since regional aid to large enterprises for their investments is unlikely to have an incentive effect, as a rule it cannot be considered as compatible with the functioning of the EEA Agreement under Article 61(3)(c) of the EEA Agreement, unless it is granted for initial investments that create new economic activities in these 'c' areas in line with the criteria laid down in these Guidelines. [...] ⁽²³⁾ ⁽²⁴⁾.
15. Regional aid aimed at reducing the current expenses of an undertaking constitutes operating aid. Operating aid may be considered compatible only if it can be shown that it is necessary for the development of the area, for instance if it aims to reduce certain specific difficulties faced by SMEs in the most disadvantaged areas (under Article 61(3)(a) of the EEA Agreement), if it compensates for additional costs incurred in pursuing an economic activity in outermost regions, or if it prevents or reduces depopulation in sparsely and very sparsely populated areas.

for Europe and clarified in the Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24–29).

⁽¹⁷⁾ [...].

⁽¹⁸⁾ [...].

⁽¹⁹⁾ Transport means the transport of passengers by aircraft, maritime transport, road, railway and by inland waterway or freight transport services for hire or reward. Transport infrastructure covered by specific guidelines, such as airports, is also excluded from these Guidelines (see the Guidelines on state aid to airports and airlines, OJ L 318, 24.11.2016, p. 17, and EEA Supplement No 66, 24.11.2016, p. 1.).

⁽²⁰⁾ Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks (OJ L 135, 8.5.2014, p. 49, and EEA Supplement No. 27, 8.5.2014, p. 1).

⁽²¹⁾ ESA will assess the compatibility of state aid to the energy sector on the basis of the Guidelines on state aid for environmental protection and energy 2014-2020 (OJ L 131, 28.5.2015, p. 16, and EEA Supplement No 30, 28.5.2015, p. 1).

⁽²²⁾ [...].

⁽²³⁾ [...].

⁽²⁴⁾ [...].

16. These Guidelines do not cover operating aid awarded to undertakings whose principal activity falls under Section K 'Financial and insurance activities' of the NACE Rev. 2 statistical classification of economic activities ⁽²⁵⁾ or to undertakings that perform intra-group activities and whose principal activity falls under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2.
17. Regional aid may not be awarded to undertakings in difficulty, as defined for the purpose of these Guidelines by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽²⁶⁾.
18. When assessing regional aid awarded to an undertaking that is subject to an outstanding recovery order following a previous ESA decision declaring an aid illegal and incompatible with the the functioning of the EEA Agreement, ESA will take account of any aid still to be recovered ⁽²⁷⁾.

2.2. Definitions

19. For the purposes of these Guidelines, the following definitions apply:
 - (1) "a' areas' mean areas designated in a regional aid map in accordance with Article 61(3)(a) of the EEA Agreement and "c' areas' mean areas designated in a regional aid map in accordance with Article 61(3)(c) of the EEA Agreement;
 - (2) 'ad hoc aid' means aid that is not awarded on the basis of a scheme;
 - (3) 'adjusted aid amount' means the maximum permissible aid amount for a large investment project, calculated according to the following formula:
 - 3.1. $\text{adjusted aid amount} = R \times (A + 0.50 \times B + 0.34 \times C)$
 - 3.2. where: R is the maximum aid intensity applicable in the area concerned, excluding the increased aid intensity for SMEs. A is the part of eligible costs equal to EUR 50 million, B is the part of eligible costs between EUR 50 million and EUR 100 million, and C is the part of eligible costs above EUR 100 million;
 - (4) 'aid intensity' means the gross grant equivalent expressed as a percentage of the eligible costs;

⁽²⁵⁾ NACE is an acronym derived from the French title "Nomenclature générale des Activités économiques dans les Communautés Européennes" (Statistical classification of economic activities in the European Communities) used to designate the various statistical classifications of economic activities in the EU. See 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). The Regulation is incorporated into Annex XXI of the EEA Agreement by EEA Joint Committee Decision No 61/2007 (OJ L 266, 11.10.2007, p. 25, and EEA Supplement No 48, 11.10.2007, p. 18).

⁽²⁶⁾ Guidelines on state aid for rescuing and restructuring non-financial undertakings in difficulty (OJ L 271, 16.10.2015, p. 35, and EEA Supplement No 62, 15.10.2015, p. 1). As explained in point 23 of those guidelines, given that its very existence is in danger, an undertaking in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured.

⁽²⁷⁾ See judgment of 13 September 1995, *TWD Textilwerke Deggendorf GmbH v Commission of the European Communities*, Joined cases T-244/93 and T-486/93, EU:T:1995:160, paragraph 56, and ESA's communication on recovery of unlawful and incompatible state aid (OJ L 105, 21.4.2011, p. 32, and EEA Supplement No 23, 21.4.2011, p. 1).

- (5) 'assisted area' means either an 'a' area' or a 'c' area';
- (6) 'completion of the investment' means the moment when the investment is considered by the national authorities as completed or three years after the start of works, whichever is earlier;
- (7) 'date of award of the aid' means the date when the legal right to receive the aid is conferred on the aid beneficiary under the applicable national legal regime;
- (8) 'EU27' means all 27 Member States (excluding Northern Ireland) (*);
 - (8a) 'EEA States' means the EU27 and the EEA EFTA States;
 - (8b) 'EEA EFTA States' means Iceland, Liechtenstein and Norway;
- (9) 'evaluation plan' means a document covering one or more aid schemes and containing at least the following minimum aspects: the objectives to be evaluated, the evaluation questions, the result indicators, the envisaged method to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the interim and the final evaluation reports, the description of the independent body that will carry out the evaluation or the criteria that will be used for its selection and the modalities for making the evaluation publicly available;
- (10) 'gross grant equivalent' means the discounted amount of the aid equivalent to what it would amount to if provided in the form of a grant to the aid beneficiary, before taxes or other charges, as calculated at the date of award of the aid or at the time the aid is notified to ESA, whichever is earlier, on the basis of the reference rate applicable on that date;
- (11) 'horizontal regional operating aid scheme' means an act on the basis of which, without further implementing measures, individual operating aid may be granted to undertakings defined in the act in a general and abstract manner. For the purpose of this definition, a sectoral aid scheme cannot be considered as a horizontal regional operating aid scheme;
- (12) 'individual aid' means *ad hoc* aid or notifiable awards of aid to individual beneficiaries on the basis of an aid scheme;
- (13) 'initial investment' means:
 - a) an investment in tangible and intangible assets related to one or more of the following:
 - 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⁽²⁸⁾ not previously produced in the establishment; or
 - a fundamental change in the overall production process of the product(s) concerned by the investment in the establishment; or

(*) See in this context also footnote 3.

⁽²⁸⁾ The concept of product also covers services in the context of these Guidelines.

- b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased. Sole acquisition of the shares of an undertaking does not qualify as initial investment.

Replacement investment thus does not constitute initial investment.

(14) 'initial investment that creates a new economic activity' means:

- a) an investment in tangible and intangible assets related to one or more of the following:
 - the setting up of a new establishment; or
 - the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment; or
 - b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, provided that the new activity to be carried out using the acquired assets is not the same or a similar activity than the one carried out in the establishment before the acquisition. Sole acquisition of the shares of an undertaking does not qualify as initial investment that creates a new economic activity.
- (15) 'intangible assets' means assets that do not have a physical or financial embodiment such as patent rights, licences, know-how or other intellectual property;
- (16) 'job creation' means a net increase in the number of employees in the establishment concerned compared with the average over the previous 12 months, after deducting from the number of jobs created, any job losses that occurred during that period, expressed in annual labour units;
- (17) 'large enterprises' means undertakings that do not fulfill the conditions to qualify as SMEs in accordance with point (28);
- (18) 'large investment project' means an initial investment with eligible costs exceeding EUR 50 million;
- (19) 'maximum aid intensity' means the aid intensity reflected in the regional aid maps set out in subsection 7.4, including the increased aid intensity for SMEs;
- (20) 'number of employees' means the number of annual labour units, namely the numbers of persons employed full-time in one year; persons working part-time or employed in seasonal work are counted in annual labour unit fractions;
- (21) [...] ⁽²⁹⁾;
- (22) 'operating aid' means aid aimed to reduce an undertaking's current expenditure, including categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent and administration, but excluding depreciation charges and the costs of financing if these have been included in the eligible costs when granting regional investment aid;
- (23) 'regional aid map' means the list of areas designated by an EEA EFTA State in line with the conditions laid down in these Guidelines and approved by ESA;

⁽²⁹⁾ [...].

- (24) 'relocation' means a transfer of the same or a similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the aid beneficiary in the EEA;
- (25) 'same or a similar activity' means an activity in the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities;
- (26) 'sectoral aid scheme' means a scheme that covers activities falling within the scope of fewer than five classes (four-digit numerical code) of the NACE Rev.2 statistical classification;
- (27) 'single investment project' means any initial investment related to the same or a similar activity started by the aid beneficiary at group level within three years of the date of start of works on another aided investment in the same statistical region at level 3 ⁽³⁰⁾;
- (28) 'SMEs' means undertakings that fulfil the conditions laid down in ESA's guidelines of 19 April 2006 on aid to micro, small and medium-sized enterprises ⁽³¹⁾;
- (29) '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, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For takeovers, 'start of works' means the date when the assets directly linked to the acquired establishment were acquired;
- (30) 'sparsely populated areas' mean the areas designated by the EEA EFTA State concerned in line with paragraph 169;
- (31) 'tangible assets' means assets such as land, buildings, and plant, machinery and equipment;

⁽³⁰⁾ In these Guidelines the term "statistical region" will be used instead of the acronym "NUTS" in the Commission Guidelines. NUTS is derived from the title "Nomenclature of Territorial Units for Statistics" according to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS) as amended by the Commission Delegated Regulation 2019/1755 of 8 August 2019, (OJ L 270, 24.10.2019). This regulation has not been incorporated into the EEA Agreement. However, in order to achieve common definitions in an ever-increasing demand for statistical information at a regional level, the Statistical Office of the European Union, Eurostat, and the National Institutes of the Candidate countries and EFTA have agreed that statistical regions be established similar to the NUTS classification. The data used in these Guidelines are based on this 2021 nomenclature.

⁽³¹⁾ EFTA Surveillance Authority Decision No 94/06/COL of 19 April 2006 amending for the fifty-seventh time the procedural and substantive rules in the field of state aid (OJ L 36, 5.2.2009, p. 62, and EEA Supplement No 6, 5.2.2009, p. 1).

- (32) 'very sparsely populated areas' mean statistical regions at level 2 with fewer than eight inhabitants per km² or parts of such statistical regions designated by the EEA EFTA State concerned in line with paragraph 169;
- (33) 'wage costs' means the total amount actually payable by the aid beneficiary in respect of the employment concerned, comprising gross wages before tax and compulsory contributions such as social security, child care and parent care costs over a defined period of time.

3. NOTIFIABLE REGIONAL AID

20. In principle, EEA EFTA States must notify regional aid pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3"), with the exception of measures that fulfil the conditions laid down in a Block Exemption Regulation incorporated in the EEA Agreement through Annex XV ⁽³²⁾.
21. ESA will apply these Guidelines to notifiable regional aid schemes and notifiable individual regional aid.
22. Individual aid granted under a notified scheme remains subject to the notification obligation under Article 1(3) of Part I of Protocol 3 if the aid from all sources exceeds the individual notification threshold laid down in the General Block Exemption Regulation ⁽³³⁾ ("GBER") for regional investment aid.
23. Individual aid granted under a notified scheme also remains subject to the notification obligation under Article 1(3) of Part I of Protocol 3 unless the beneficiary:
- a) has confirmed that in the 2 years preceding the application for aid, it has not carried out a relocation to the establishment in which the aided initial investment is to take place, and
 - b) has committed not to carry out such relocation up to a period of two years after completion of the initial investment.

4. ELIGIBLE COSTS

4.1. Investment aid

24. The eligible costs are as follows:
- 1) investment costs in tangible and intangible assets; or
 - 2) the estimated wage costs arising from job creation as a result of an initial investment, calculated over two years; or
 - 3) a combination of part of the costs referred to in point 1) and 2) but not exceeding the amount of 1) or 2), whichever is higher.

⁽³²⁾ [...].

⁽³³⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 26.6.2014, p. 1). The Regulation was incorporated into the EEA Agreement at point 1j of Annex XV by EEA Joint Committee Decision No 152/2014 (OJ L 342, 27.11.2014, p. 63, and EEA Supplement No 71, 27.11.2014, p. 61).

25. If the eligible costs are drawn up on the basis of investment costs in tangible and intangible assets, only the costs of assets that form part of the initial investment in the establishment of the aid beneficiary located in the targeted assisted area are eligible.
26. By way of derogation from the condition in paragraph 25, vendor tooling ⁽³⁴⁾ assets can be included in the eligible costs of the undertaking that acquired (or produced) them if they are used over the full minimum maintenance period of five years for large enterprises, and three years for SMEs, for a processing or assembly operation of the aid beneficiary directly linked to a production process based on the aided initial investment of the aid beneficiary. This derogation is applicable provided the supplier's establishment is located in an assisted area, the supplier itself does not receive regional investment aid or investment aid for SMEs pursuant to Article 17 GBER for the assets concerned, and the aid intensity does not exceed the relevant maximum aid intensity applicable to the location of the supplier's establishment. Any adjustment of the aid intensity for large investment projects also applies to the aid calculated for the costs of the vendor tooling assets, which are considered to form part of the overall investment costs of the initial investment.

4.1.1. *Eligible costs calculated on the basis of investment costs*

27. The assets acquired must be new, except for SMEs or for the acquisition of an establishment ⁽³⁵⁾.
28. For SMEs, up to 50% of the costs of preparatory studies or consultancy costs linked to the investment may also be considered as eligible costs.
29. For aid granted to large enterprises for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised over the preceding three fiscal years.
30. For aid awarded for a diversification of an existing establishment, the eligible costs must exceed by at least 200% the book value of the reused assets, as registered in the fiscal year preceding the start of works.
31. Costs related to the lease of tangible assets may be taken into account under the following conditions:
 - 1) for land and buildings, the lease must continue for at least five years after the expected date of completion of the investment for large enterprises, and three years for SMEs;
 - 2) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the aid beneficiary to purchase the asset at the expiry of the term of the lease.

⁽³⁴⁾ Vendor tooling is the acquisition (or auto-production) of machines, tools or equipment and related software by an undertaking (at group level), which are acquired (or produced) not for use on one of its premises (at group level), but made available to selected suppliers for the production of products to be manufactured on the supplier's premises, which will serve as intermediary products for the production process of the undertaking. Vendor tooling assets remain the property of the acquiring undertaking, but are made available to the supplier for the tasks and under the conditions defined in a supply contract or similar agreement. They are linked to well-defined processing or assembly operations in one or several of the undertaking's (at group level) premises, and may have to be returned to the owner after completion of the order, or expiry or termination of a framework contract.

⁽³⁵⁾ Defined in paragraph 19 (13) and (14).

32. In case of an initial investment as referred to in paragraph 19(13)(b) or 19(14)(b), in principle only the costs of buying the assets from third parties unrelated to the buyer should be taken into consideration. However, if a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets must be bought from third parties unrelated to the buyer does not apply. The transaction must take place under market conditions. If the acquisition of the assets of an establishment is accompanied by an additional investment eligible for regional aid, the eligible costs of that additional investment should be added to the costs of acquisition of the assets of the establishment.
33. For large enterprises, the costs of intangible assets are eligible only up to 50% of the total eligible investment costs for the initial investment. For SMEs, 100% of the costs of intangible assets are eligible.
34. Intangible assets that can be taken into account for the calculation of the investment costs must remain associated with the area concerned and must not be transferred to other areas. To this end, the intangible assets must fulfil the following conditions:
 - 1) they must be used exclusively in the establishment receiving the aid;
 - 2) they must be amortisable;
 - 3) they must be purchased under market conditions from third parties unrelated to the buyer;
 - 4) they must be included in the assets of the undertaking that receives the aid and must remain associated with the project for which the aid is awarded for at least five years (three years for SMEs).

4.1.2. Eligible costs calculated on the basis of wage costs

35. Regional aid may also be calculated by reference to the estimated wage costs arising from job creation as a result of an initial investment. The aid may compensate only the wage costs related to job creation, calculated over two years, and the resulting aid intensity must not exceed the maximum applicable aid intensity in the area concerned.
36. Where eligible costs are calculated by reference to the estimated wage costs as referred to in paragraph 35, the following conditions must be fulfilled:
 - 1) the investment project must lead to job creation;
 - 2) each post must be filled within three years of the completion of the investment;
 - 3) each job created through the investment must be maintained in the area concerned for at least five years from the date the post was first filled, or three years for SMEs.

4.2. Operating aid

37. Eligible costs for operating aid schemes must be predefined and fully attributable to the problems that the aid is intended to address, as demonstrated by the EEA EFTA State.
38. [...].

5. COMPATIBILITY ASSESSMENT OF REGIONAL AID

39. ESA will consider a regional aid measure compatible with Article 61(3) of the EEA Agreement only if the aid contributes to regional development and cohesion. The aim

must be either to promote the economic development of 'a' areas or to facilitate the development of 'c' areas (Section 5.1) and in addition it must meet each of the following criteria:

- 1) incentive effect: the aid must change the behaviour of the undertakings concerned in such a way that they carry out an additional activity which they would not carry out without the aid or would carry out in a restricted or different manner or location; (Section 5.2)
 - 2) need for State intervention: a state aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern; (Section 5.3)
 - 3) appropriateness of the aid measure: the proposed aid measure must be an appropriate policy instrument to meet its objective; (Section 5.4)
 - 4) proportionality of the aid (aid to the minimum): the aid amount must be limited to the minimum needed to stimulate the additional investment or activity in the area concerned; (Section 5.5)
 - 5) avoidance of undue negative effects on competition and trade between EEA States: the negative effects of the aid on competition and trade must be outweighed by the positive effects; (Section 5.6)
 - 6) transparency of the aid: EEA States, ESA, economic operators, and the public, must have easy access to all relevant acts and information on the aid awarded (Section 5.7).
40. The overall balance of certain categories of schemes may also be made subject to the requirement to carry out an *ex post* evaluation, as described in Section 6. In such cases, ESA may limit the duration of the schemes (typically to four years or less), with the option to re-notify their prolongation afterwards.
41. If a state aid measure, the conditions attached to it (including its financing method when the financing method forms an integral part of the state aid measure), or the activity it finances entail a violation of a relevant provision of EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement ⁽³⁶⁾.

5.1. Contribution to regional development and cohesion

42. The primary objective of regional aid is the economic development of the disadvantaged areas within the EEA. By promoting and facilitating the sustainable development of assisted areas, the aid improves economic and social cohesion by reducing disparities in the level of development between areas.

5.1.1. Investment aid schemes

43. Regional aid schemes should form an integral part of a regional development strategy with clearly defined objectives.
44. EEA EFTA States must demonstrate that the scheme is consistent with and contributes to the development strategy of the area concerned. For this purpose, EEA EFTA States can refer to evaluations of past state aid schemes, impact assessments made by the

⁽³⁶⁾ See the judgments of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78, and of 22 December 2008, *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraphs 94 to 116.

granting authorities, or expert opinions. To ensure that the aid scheme contributes to the development strategy, it must include a method that enables the granting authorities to prioritise and select the investment projects that meet the objectives of the scheme (for example, by using a formal scoring method).

45. Regional aid schemes may be put in place in 'a' areas to support initial investments made by SMEs or large enterprises. In 'c' areas, schemes may be put in place to support initial investments made by SMEs and initial investments that create a new economic activity made by large enterprises.
46. When awarding aid to individual investment projects on the basis of a scheme, the granting authority must verify that the selected project will contribute towards the scheme's objective and thus towards the development strategy in the area concerned. For this purpose, EEA EFTA States should refer to the information provided by the aid applicant in the aid application form describing the positive effects of the investment on the development of the area concerned ⁽³⁷⁾.
47. To ensure that the investment makes a real and sustained contribution to the development of the area concerned, the investment must be maintained in that area for at least five years, or three years for SMEs, after the completion of the investment ⁽³⁸⁾.
48. To ensure that the investment is viable, the EEA EFTA State must ensure that the aid beneficiary provides a financial contribution of at least 25% ⁽³⁹⁾ of the eligible costs, through its own resources or by external financing, in a form that is free of any public support⁴⁰.
49. To avoid state aid measures leading to environmental harm, EEA EFTA States must also ensure compliance with EEA environmental legislation, including in particular the need to carry out an environmental impact assessment when required by law and to obtain all relevant permits.

5.1.2. *Notifiable individual investment aid*

50. To demonstrate the contribution of notifiable individual investment aid to regional development, EEA EFTA States may use a variety of indicators such as the ones mentioned below that can be both direct (for example, direct jobs created) and indirect (for example, local innovation):
 - 1) The number of direct jobs created by the investment is an important indicator of the contribution to regional development and cohesion. The quality and durability of the jobs created and the required skill level should also be considered.
 - 2) An even higher number of new jobs might be created in the local (sub-) supplier network, helping to better integrate the investment in the area concerned and

⁽³⁷⁾ See Annex VII.

⁽³⁸⁾ The obligation to maintain the investment in the area concerned for a minimum period of five years (three years for SMEs) should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, regional aid may not be awarded to replace that plant or equipment.

⁽³⁹⁾ [...].

⁽⁴⁰⁾ This is not the case for example for subsidised loans, public equity-capital loans or public participations which do not meet the market investor principle, State guarantees containing elements of aid, or public support granted within the scope of the de minimis rule.

ensuring more widespread spillover effects. The number of indirect jobs created is therefore also an indicator to be taken into account.

- 3) A commitment by the aid beneficiary to enter into widespread training activities to improve the skills (general and specific) of its workforce will be considered as a factor that contributes to regional development and cohesion. Emphasis will also be put on providing traineeships or apprenticeships, especially for young people and on training that improves the knowledge and employability of workers outside the undertaking.
 - 4) External economies of scale or other benefits from a regional development viewpoint may arise as a result of proximity (clustering effect). Clustering of undertakings in the same industry allows individual plants to specialise more, which leads to increased efficiency. However, the importance of this indicator in determining the contribution to regional development and cohesion depends on the state of development of the cluster.
 - 5) Investments embody technical knowledge and can be the source of a significant transfer of technology (knowledge spillovers). Investments taking place in technology intensive industries are more likely to involve technology transfer to the area concerned. The level and the specificity of the knowledge dissemination are also important in this regard.
 - 6) The projects' contribution to the area's ability to create new technology through local innovation can also be considered. Co-operation with local research and knowledge-dissemination organisations, such as universities or research institutes can be considered positively in this respect.
 - 7) The duration of the investment and possible future follow-on investments are an indication of a durable engagement of an undertaking in the area concerned.
51. EEA EFTA States can refer to the business plan of the aid beneficiary which could provide information on the number of jobs to be created, salaries to be paid (increase in household wealth as spill-over effect), volume of acquisition from local producers, turnover generated by the investment and benefiting the area possibly through additional tax revenues.
 52. For notifiable individual investment aid, the requirements laid down in paragraphs 47 to 49 apply.
 53. For *ad hoc* aid ⁽⁴¹⁾, EEA EFTA States must demonstrate, in addition to the requirements laid down in paragraphs 50 to 52, that the project is coherent with and contributes to the development strategy of the area concerned.

5.1.3. *Operating aid schemes*

54. Operating aid schemes promote the development of assisted areas only if the challenges that those areas face are clearly identified in advance. The obstacles to attracting or maintaining economic activity may be so severe or permanent that investment aid alone is not sufficient for these areas to develop.
55. For aid to reduce certain specific difficulties faced by SMEs in 'a' areas, EEA EFTA States must demonstrate the existence and scale of those specific difficulties and must

⁽⁴¹⁾ *Ad hoc* aid is subject to the same requirements as individual aid granted on the basis of a scheme, unless otherwise mentioned.

demonstrate that an operating aid scheme is needed as those specific difficulties cannot be overcome with investment aid.

56. [...].
57. As regards operating aid to prevent or reduce depopulation in sparsely and very sparsely populated areas, EEA EFTA States must demonstrate the risk of depopulation in the event that operating aid is not granted.

5.2. Incentive effect

5.2.1. Investment aid

58. Regional aid can only be found compatible with the functioning of the EEA Agreement if it has an incentive effect. State aid is considered to have an incentive effect when it changes the behaviour of an undertaking in a way that it carries out additional activity contributing to the development of an area that it would not have carried out, or would only have done in a limited or different manner or in another location, if the aid was not granted. The aid must not subsidise the costs of an activity that an undertaking would carry out in any event and must not compensate for the normal business risk of an economic activity.
59. The incentive effect can be proven in two ways:
- 1) the aid gives an incentive to take a positive decision to invest in the area concerned because otherwise the investment would not be sufficiently profitable for the aid beneficiary anywhere in the EEA ⁽⁴²⁾ (*scenario 1, investment decision*),
 - 2) the aid gives an incentive to locate a planned investment in the area concerned rather than elsewhere because it offsets the net disadvantages and costs of investing in a location in the area concerned (*scenario 2, location decision*).
60. If the aid does not change the behaviour of the aid beneficiary by stimulating (additional) initial investment in the area concerned, it can be considered that the same investment would be made in the area even without the aid. The aid therefore lacks an incentive effect to achieve the regional development and cohesion objective and cannot be approved as compatible with the functioning of the EEA Agreement under these Guidelines.
61. However, for regional aid awarded through cohesion policy funds in 'a' areas to investments necessary to achieve standards set by EEA law, the aid may be considered to have incentive effect, if in absence of the aid, it would not have been sufficiently profitable for the aid beneficiary to make the investment in the area concerned, leading to the closure of an existing establishment in that area.

5.2.1.1. Investment aid schemes

62. Works on an individual investment can start only after the application form for aid is submitted.
63. If works start before the application form for aid is submitted, any aid awarded for that individual investment will not be considered compatible with the functioning of the EEA Agreement.

⁽⁴²⁾ Such investments may create the conditions for further investments that are viable without additional aid.

64. EEA EFTA States must submit a standard aid application form that contains, as a minimum, all the information listed in Annex VII. In the application form, SMEs and large enterprises must explain counterfactually what would happen if they were not granted aid, indicating the applicable scenario described in paragraph 59.
65. In addition, large enterprises must submit documentary evidence to underpin the counterfactual described in the application form. SMEs are not subject to such obligation in respect of non-notifiable aid granted under a scheme.
66. The granting authority must carry out a credibility check of the counterfactual and verify that regional aid has the required incentive effect corresponding to one of the scenarios described in paragraph 59. A counterfactual is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the aid beneficiary regarding the investment.

5.2.1.2. Notifiable individual investment aid

67. In addition to the requirements of paragraphs 62 to 66, for notifiable individual aid, EEA EFTA States must provide clear evidence that the aid has an impact on the investment decision or on the choice of location ⁽⁴³⁾. They must specify which scenario described in paragraph 59 applies. To enable a comprehensive assessment to be made, EEA EFTA States must provide not only information on the project but also a comprehensive description of the counterfactual scenario, in which the applicant receives no aid from any public authority in the EEA.
68. In *scenario 1*, EEA EFTA States could prove that the aid has an incentive effect by providing the undertaking's documents that show that the investment would not be sufficiently profitable without the aid.
69. In *scenario 2*, EEA EFTA States could prove that the aid has an incentive effect by providing the undertaking's documents showing that a comparison has been made between the costs and benefits of locating in the area concerned and those in alternative area(s). ESA verifies whether these comparisons are realistic.
70. EEA EFTA States are invited to draw on genuine and official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Those documents need to be contemporary to the decision making process concerning the investment or its location. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents submitted to an investment committee and that elaborate on investment scenarios, or documents provided to the financial institutions could help EEA EFTA States to demonstrate the incentive effect.
71. In this context, and in particular in *scenario 1*, the level of profitability can be evaluated by using methods that are standard practice in the given industry, which may include methods to evaluate the net present value of the project (NPV) ⁽⁴⁴⁾, the internal rate of return (IRR) ⁽⁴⁵⁾ or the average return on capital employed (ROCE). The profitability of the project is to be compared with normal rates of return applied by the beneficiary in

⁽⁴³⁾ The counterfactual scenarios are described in paragraph 64.

⁽⁴⁴⁾ The NPV of a project is the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital).

⁽⁴⁵⁾ The IRR is not based on accounting earnings in a given year, but takes into account the stream of future cash flows that the investor expects to receive over the entire lifetime of the investment. It is defined as the discount rate for which the NPV of a stream of cash flows equals zero.

other investment projects of a similar kind. Where these rates are not available, the profitability of the project must be compared with the cost of capital of the beneficiary as a whole or with the rates of return commonly observed in the industry concerned.

72. If the aid does not change the behaviour of the aid beneficiary by stimulating (additional) investment in the area, there is no positive effect for the area. Therefore, aid will not be considered compatible with the functioning of the EEA Agreement if it appears that the same investment would be made in the area even without aid being granted.

5.2.2. Operating aid schemes

73. For operating aid schemes, the aid is considered to have an incentive effect if it is likely that, in the absence of aid, the level of economic activity in the area concerned would be significantly reduced due to the problems that the aid aims to tackle.
74. ESA will therefore consider that the operating aid provides an incentive to additional economic activity in the area, if the EEA EFTA State has demonstrated the existence and substantial nature of those problems in that area (see paragraphs 54 to 57).

5.3. Need for State intervention

75. To assess whether state aid is necessary to achieve the objective of regional development and cohesion, it is necessary first to diagnose the problem. State aid should be targeted to situations where aid can bring about a material improvement that the market cannot deliver. This is especially important in a context of scarce public resources.
76. State aid measures can, under certain conditions, correct market failures and thereby contribute to the efficient functioning of markets and boost competitiveness. Where markets do provide efficient outcomes but such outcomes are deemed unsatisfactory in terms of equity or cohesion, state aid may be used to obtain a more desirable, equitable market outcome.
77. As regards aid granted for the development of areas included in the regional aid map in line with the rules in section 7 of these Guidelines, ESA considers that in those areas, the market does not deliver outcomes resulting in a sufficient level of economic development and cohesion without State intervention. Therefore, aid granted in those areas is considered necessary.

5.4. Appropriateness of regional aid

78. The aid measure must be an appropriate policy instrument to address the policy objective concerned. An aid measure will not be considered compatible if other less distortive policy instruments or other less distortive types of aid instrument make it possible to achieve the same positive contribution to regional development and cohesion.

5.4.1. Appropriateness among alternative policy instruments

5.4.1.1. Investment aid

79. Regional investment aid is not the only policy instrument available to EEA EFTA States to boost investment and job creation in assisted areas. EEA EFTA States can use other measures such as infrastructure development, enhancing the quality of education and training, or improving the business environment.

80. When notifying an investment aid scheme, EEA EFTA States must indicate why regional aid is an appropriate instrument to help develop the area.
81. If an EEA EFTA State decides to put in place a sectoral aid scheme, it must demonstrate the advantages of doing so instead of using a multi-sectoral scheme or other policy options.
82. In particular, ESA will take account of impact assessments of the proposed aid scheme that EEA EFTA States make available. Likewise, it may take into account the results of *ex post* evaluations described in Section 6 to assess the appropriateness of the proposed scheme.
83. In the case of *ad hoc* investment aid, EEA EFTA States must demonstrate how the aid can better contribute to the development of the area than aid under a scheme or other types of measures.

5.4.1.2. Operating aid schemes

84. EEA EFTA States must demonstrate that the aid is appropriate to achieve the objective of the scheme for the problems that the aid aims to address. To demonstrate that the aid is appropriate, EEA EFTA States may calculate the aid amount *ex ante* as a fixed sum covering the expected additional costs over a given period, to encourage undertakings to contain costs and develop their business in a more efficient manner over time ⁽⁴⁶⁾.

5.4.2. Appropriateness among different aid instruments

85. Regional aid can be awarded in several forms. EEA EFTA States must however, ensure that the aid is awarded in the form likely to have the lowest impact in distorting trade and competition. If the aid is awarded in forms that provide a direct pecuniary advantage (for example, direct grants, exemptions or reductions in taxes, social security or other compulsory charges, or the supply of land, goods or services at favourable prices), EEA EFTA States must demonstrate why other potentially less distortive forms of aid such as repayable advances or aid based on debt or equity instruments (for example, low-interest loans or interest rebates, State guarantees, the purchase of a share-holding or an alternative injection of capital on favourable terms) are not appropriate.
86. The results of *ex post* evaluations as described in Section 6 may be taken into account to assess the appropriateness of the proposed aid instrument.

5.5. Proportionality of the aid amount (limiting aid to the minimum needed)

5.5.1. Investment aid

87. The amount of regional aid must be limited to the minimum needed to stimulate additional investment or activity in the area concerned.
88. To ensure predictability and a level playing field, ESA applies maximum aid intensities ⁽⁴⁷⁾ for investment aid.

⁽⁴⁶⁾ However, where future costs and revenue developments are surrounded by a high degree of uncertainty and there is a strong asymmetry of information, the public authority may also wish to adopt compensation models that are not entirely *ex ante*, but a mix of *ex ante* and *ex post* (for example, using claw backs such as to allow sharing of unanticipated gains).

⁽⁴⁷⁾ See Section 7.4. on regional aid maps.

89. For an initial investment project, the maximum aid intensity and maximum aid amount ⁽⁴⁸⁾ (adjusted aid amount ⁽⁴⁹⁾ and the related reduced aid intensity for a large investment project) must be calculated by the granting authority when awarding the aid or notifying the aid to ESA, whichever is earlier.
90. Since large investment projects are likely to give rise to greater distortions of competition and trade, the aid amount for these projects must not exceed the adjusted aid amount.
91. Where the initial investment is part of a single investment project and that single investment project is a large investment project, the aid amount for the single investment project must not exceed the adjusted aid amount. The exchange rate and discount rate to be applied for the purpose of this rule are those applicable at the date of award of the aid for the first project in the single investment project.
92. The maximum aid intensities serve a dual purpose.
93. First, for notifiable schemes, these maximum aid intensities serve as safe harbours for SMEs: provided that the aid intensity remains below the maximum permissible, the aid is deemed proportionate.
94. Second, for all other cases, the maximum aid intensities are used as a cap to the net-extra costs approach described in paragraphs 95 to 97.
95. As a general rule, ESA will consider notifiable individual aid to be limited to the minimum, if the aid amount corresponds to the net-extra costs of investing in the area concerned, compared to the counterfactual in the absence of aid ⁽⁵⁰⁾, with maximum aid intensities as a cap. Likewise, for investment aid granted to large enterprises under notifiable schemes, EEA EFTA States must ensure that the aid amount is limited to the minimum on the basis of a 'net-extra costs approach', with maximum aid intensities as a cap.
96. For *scenario 1* situations (investment decisions), the aid amount should therefore not exceed the minimum necessary to render the project sufficiently profitable, for example to increase its IRR above the normal rate applied by the undertaking in other investment projects of a similar kind or, when available, to increase its IRR above the cost of capital of the beneficiary as a whole or above the rates of return commonly achieved in that industry.
97. For *scenario 2* situations (location incentives), the aid amount should not exceed the difference between the NPV of the investment in the target area with the NPV in the alternative location. All relevant costs and benefits must be taken into account, including for example administrative costs, transport costs, training costs not covered by training aid and wage differences. However, if the alternative location is in the EEA, subsidies in that location cannot be taken into account.
98. Calculations used to analyse the incentive effect can also be used to assess whether the aid is proportionate. EEA EFTA States must demonstrate proportionality with documentation, such as that referred to in paragraph 70.
99. Investment aid may be awarded concurrently under several regional aid schemes or cumulated with *ad hoc* regional aid, provided that the total aid from all sources does

⁽⁴⁸⁾ Expressed as gross grant equivalent.

⁽⁴⁹⁾ *Idem*.

⁽⁵⁰⁾ When comparing counterfactual scenarios, the aid is to be discounted by the same factor as the corresponding investment and counterfactual scenarios.

not exceed the maximum aid intensity per project, which must be calculated in advance by the first granting authority. Any other state aid in relation to the same eligible costs, partly or fully overlapping, may be cumulated only if it does not result in exceeding the highest aid intensity or aid amount applicable to this aid under the applicable thematic rules. Cumulation checks must be carried out both when the aid is granted and when the aid is paid ⁽⁵¹⁾. If the EEA EFTA State allows state aid under one scheme to be cumulated with state aid under other schemes, it must specify, for each scheme, the method to ensure compliance with the conditions in this paragraph.

100. For an initial investment linked to European Territorial Cooperation (ETC) projects meeting the criteria of the Regulation laying down the specific provisions for the European Territorial Cooperation goal (Interreg) ⁽⁵²⁾, the aid intensity applicable to the area in which the initial investment is located applies to all beneficiaries participating in the project. If the initial investment is located in two or more assisted areas, the maximum aid intensity for the initial investment is the one applicable in the assisted area where the highest amount of the eligible costs is incurred. Initial investments carried out by large enterprises in 'c' areas may only receive regional aid in the context of ETC projects if they are initial investments that create a new economic activity.

5.5.2. *Operating aid schemes*

101. EEA EFTA States must demonstrate that the level of the aid is proportionate to the problems that the aid aims to address.
102. In particular, EEA EFTA States must meet the following conditions:
- 1) the aid must be calculated in relation to a predefined set of eligible costs that are fully attributable to the problems that the aid aims to address, as demonstrated by the EEA EFTA State;
 - 2) the aid must be limited to a certain proportion of that predefined set of eligible costs and must not exceed these costs;
 - 3) the aid amount per aid beneficiary must be proportional to the level of the problems actually experienced by each aid beneficiary.
103. As regards aid to reduce certain specific difficulties faced by SMEs in 'a' areas, the level of the aid must be progressively reduced over the duration of the scheme ⁽⁵³⁾. This does not apply to schemes to prevent depopulation in sparsely and very sparsely populated areas.

5.6. Avoiding undue negative effects on competition and trade

104. For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between EEA States must be limited

⁽⁵¹⁾ The requirement that the maximum permissible aid intensity per project must be calculated in advance by the first granting authority does not apply when the aid is granted via automatic aid scheme(s) in the form of a tax advantage. In this situation, cumulation checks are in principle not possible when the aid is granted and should be carried out when the aid is paid out.

⁽⁵²⁾ Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p. 259) or a Regulation containing specific provisions for the European territorial cooperation goal (Interreg) applicable to the 2021-2027 programming period, whichever applies to a given initial investment.

⁽⁵³⁾ Including when operating aid schemes are notified to prolong existing aid measures.

and must not outweigh the positive effects of the aid to an extent that would be contrary to the common interest.

5.6.1. *General considerations*

105. In the overall balancing of the positive effects of the aid (section 5.1) against its negative effects on competition and trade, ESA may take into account, where relevant, the circumstance that on top of its contribution to regional development and cohesion, the aid produces other positive effects. Such may be the case for instance where it is established that the initial investment, in addition to creating local jobs, introducing new activities and/or generating local revenues, contributes substantially in particular to the digital transition or transition towards environmentally sustainable activities, including low carbon, climate neutral or climate-resilient activities. ESA will pay particular attention to Article 3 of the EU Taxonomy Regulation (EU) 2020/852⁽⁵⁴⁾, including the “Do no significant harm” principle, or other comparable methodologies. Furthermore, as part of the assessment of negative effects on competition and trade, ESA may take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between EEA States to an extent contrary to the common interest by creating or aggravating market inefficiencies⁽⁵⁵⁾.
106. In terms of negative effects, regional aid can give rise to two main types of potential distortion of competition and trade. These are product market distortions and location effects. Both types of distortion can lead to allocative inefficiencies (undermining the economic performance of the internal market) and to distributional concerns (distribution of economic activity across areas).
107. One potentially harmful effect of state aid is that it prevents the market from delivering efficient outcomes by rewarding the most efficient producers and putting pressure on the least efficient to improve, restructure or exit the market. State aid that gives rise to a substantial capacity expansion in an underperforming market can unduly distort competition, as the creation or maintenance of overcapacity can squeeze profit margins, reduce competitors’ investments or even result in competitors exiting the market. This can lead to a situation where competitors that would otherwise be able to compete on the market are forced out of the market. It may also prevent undertakings from entering or expanding in the market and it may weaken the incentives for competitors to innovate. This may result in inefficient market structures that are also detrimental to consumers in the long term. Making aid available may also encourage complacent or unduly risky behaviour on the part of potential beneficiaries. It is likely to have a negative long-term effect on the overall performance of the sector.
108. Aid may also have distortive effects in terms of increasing or maintaining substantial market power for the aid beneficiary. Even where aid does not strengthen substantial market power directly, it may do so indirectly by discouraging existing competitors from expanding, resulting in their exit from the market or discouraging the entry of new competitors.
109. Apart from distortions on the product markets, by its very nature, regional aid also affects the location of economic activity. If one area attracts investment due to the aid,

⁽⁵⁴⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, p. 13–43.

⁽⁵⁵⁾ This could also be the case where the aid distorts the operation of economic instruments put in place to internalise such negative externalities (e.g. by affecting price signals given by the EU Emissions Trading System or a similar instrument).

another area loses out on that opportunity. These negative effects in the areas adversely affected by aid may be felt through lost economic activity and lost jobs, including jobs for subcontractors. Negative effects may also be felt in a loss of positive externalities (for example, the cluster effect, knowledge spillovers, education and training).

110. The geographical specificity of regional aid distinguishes it from other forms of horizontal aid. A specific characteristic of regional aid is that it aims to influence the choice made by investors about where to locate investment projects. When regional aid offsets the additional costs stemming from regional constraints and supports additional investment in assisted areas without attracting it away from other equally or less developed assisted areas, it contributes not only to the development of the area, but also to cohesion and ultimately benefits the whole EEA. The potential negative location effects of regional aid are already limited to a certain degree by regional aid maps, which define the areas where regional aid may be granted, in line with the regional economic development and cohesion policy objectives, and the maximum permissible aid intensities. However, it remains important to understand what would happen in the absence of the aid to assess the impact of the aid on the development of the area and on cohesion.

5.6.2. *Manifest negative effects on competition and trade*

111. ESA identifies a number of situations where the negative effects of regional investment aid on competition and trade between EEA States manifestly outweigh any positive effects, meaning that the aid is unlikely to be declared compatible with the functioning of the EEA Agreement.

5.6.2.1. *Creating overcapacity in a market in absolute decline*

112. As pointed out in paragraph 107, to assess the negative effects of aid, ESA takes account of the additional production capacity created by the project when the market underperforms.
113. Where investments adding production capacity in a market are made possible because of state aid, there is a risk that production or investment in other areas of the EEA may be negatively affected. This is particularly likely if the capacity increase exceeds market growth or takes place in a market with overcapacity.
114. Therefore, where the investment leads to the creation or increase of overcapacity in a market that is structurally in absolute decline (i.e. the market is contracting) ⁽⁵⁶⁾, ESA considers the aid to have a negative effect, which is unlikely to be compensated by any positive effect. This applies in particular to scenario 1 situations (investment decisions).
115. For scenario 2 situations (location decisions), where the investment would be made in any event in the same geographical market or, exceptionally, in a different geographical market, but where sales target the same geographical market, the aid — provided it is limited to the minimum necessary to compensate for the locational disadvantage and does not give additional liquidity to the aid beneficiary — only influences the location decision. In this situation, the investment would add additional capacity on the given geographical market independently of the aid. Therefore, possible outcomes in terms of overcapacity would, in principle, be the same regardless

⁽⁵⁶⁾ ESA will assess this both in terms of volume and value and will take into account the business cycle.

of the aid. However, if the alternative investment location is in a different geographical market, and the aid leads to the creation of overcapacity on a market structurally in absolute decline, the conclusions of paragraph 114 apply.

5.6.2.2. Counter-cohesion effects

116. As stated in paragraphs 109 and 110, to assess the negative effects of the aid, ESA must take account of the effects on the location of the economic activity.
117. In scenario 2 situations (location decisions), where without aid the investment would have been located in an area with a regional aid intensity ⁽⁵⁷⁾ that is higher or the same as in the target area, this constitutes a negative effect that is unlikely to be compensated by any positive effect because it runs counter to the very rationale of regional aid.

5.6.2.3. Relocation

118. When evaluating the notifiable measures, ESA will request all necessary information to consider whether the state aid is likely to result in a substantial loss of jobs in existing locations within the EEA. In this situation, and if the investment enables the aid beneficiary to relocate an activity to the target area, if there is a causal link between the aid and the relocation, this constitutes a negative effect that is unlikely to be compensated by any positive effects.

5.6.3. Investment aid schemes

119. Investment aid schemes must not lead to significant distortions of competition and trade. In particular, even where distortions may be considered limited at an individual level (provided all conditions for investment aid are fulfilled), on a cumulative basis schemes might still lead to high levels of distortions. Such distortions could affect output markets by creating or aggravating a situation of overcapacity or creating, increasing or maintaining the substantial market power of some recipients in a way that negatively affects dynamic incentives. Aid available under schemes could also lead to a significant loss of economic activity in other areas of the EEA. If a scheme focuses on certain sectors, the risk of such distortions is even more pronounced.
120. Therefore, EEA EFTA States must demonstrate that these negative effects will be limited to the minimum, taking into account, for example, the size of the projects, the individual and cumulative aid amounts, the expected beneficiaries and the characteristics of the targeted sectors. For ESA to assess the likely negative effects, EEA EFTA States can submit all available impact assessment and *ex post* evaluations carried out for similar predecessor schemes.
121. When awarding aid under a scheme to individual projects, the granting authority must verify and confirm that the aid does not result in manifest negative effects, as described in paragraphs 111 to 118. This verification can be based on the information received from the aid beneficiary when applying for aid and on the declaration made in the standard application form for aid, which should indicate the alternative location in the scenario that aid is not granted.

⁽⁵⁷⁾ To verify this, the standard applicable aid ceiling in 'c' areas bordering 'a' areas should be used regardless of the increased aid intensities, in accordance with paragraph 184.

5.6.4. Notifiable individual investment aid

122. When evaluating the negative effects of individual aid, ESA distinguishes between the two counterfactual scenarios described in paragraphs 96 and 97.

5.6.4.1. Scenario 1 situations (investment decision)

123. Under scenario 1 situations, ESA places particular emphasis on the negative effects linked with the build-up of overcapacity in declining markets, the prevention of exit, and the concept of substantial market power. These negative effects are described in paragraphs 124 to 133 and must be counterbalanced with the positive effects of the aid. However, if it is established that the aid would result in the manifest negative effects described in paragraph 114, the aid is unlikely to be compensated by any positive effect and thus to be found compatible with the functioning of the EEA Agreement.
124. To identify and assess potential distortion of competition and trade, EEA EFTA States should provide evidence permitting ESA to identify the product markets concerned (products affected by the change in behaviour of the aid beneficiary) and identify the competitors and customers/consumers affected. The product concerned is typically the product covered by the investment project ⁽⁵⁸⁾. 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, or intended use) or by the producer (by reason of flexibility of production installations).
125. ESA will use multiple criteria to assess these potential distortions, such as market structure of the product concerned, performance of the market (declining or growing market), the process for selecting the aid beneficiary, entry and exit barriers and product differentiation.
126. A systematic reliance on state aid by an undertaking could indicate that the undertaking is unable to withstand competition on its own or that it derives undue advantages compared to its competitors.
127. ESA distinguishes two main sources of potential negative effects on product markets:
- 1) cases of capacity expansion which leads to or deteriorates an existing situation of overcapacity, especially in a declining market;
 - 2) cases where the aid beneficiary holds substantial market power.
128. To evaluate whether the aid serves to create or maintain inefficient market structures, ESA will take into account the additional production capacity created by the project and whether the market is underperforming.
129. If the market in question is growing, there is typically less cause for concern that the aid will negatively affect dynamic incentives or will unduly impede market exit or entry.
130. More concern is warranted when markets are in decline. ESA distinguishes between cases for which, with a long-term outlook, the market is structurally in decline (i.e. it is contracting), and cases for which the market is in relative decline (i.e. it is still growing, but does not exceed a benchmark growth rate).

⁽⁵⁸⁾ For investment projects that involve the production of several different products, each product must be assessed.

131. Underperformance of the market is typically measured against the EEA gross domestic product (GDP) over the three years before the start of the project (benchmark rate). It can also be measured on the basis of projected growth rates for the next three to five years. Indicators may include the expected future growth of the market concerned, the resulting expected capacity utilisation rates, and the likely impact of the capacity increase on competitors in terms of prices and profit margins.
132. In certain cases, assessing the growth of the product market in the EEA may not be appropriate to assess all the effects of aid, in particular if the geographic market is global. In such cases, ESA will consider the effect of the aid on the market structures concerned, in particular, its potential to crowd out producers in the EEA.
133. To evaluate the existence of substantial market power, ESA will take into account the position of the aid beneficiary over a period of time before receiving the aid and the expected market position after finalising the investment. ESA will take account of market shares of the aid beneficiary, as well as of market shares of its competitors and other relevant factors. For example, it will assess the market structure by looking at market concentration, potential barriers to entry ⁽⁵⁹⁾, buyer power ⁽⁶⁰⁾ and barriers to expansion or exit.

5.6.4.2. Scenario 2 situations (location decision)

134. If the counterfactual analysis suggests that without the aid the investment would have gone ahead in another location (scenario 2) in the same geographical market for the product concerned, and if the aid is proportional, the outcome in terms of overcapacity or substantial market power is in principle likely to be the same regardless of the aid. In such cases, the positive effects of the aid are likely to outweigh the limited negative effects on competition. However, if the alternative location is in the EEA, ESA is particularly concerned with negative effects linked with the alternative location. Therefore, if the aid results in a manifest negative effect as described in paragraphs 117 and 118, it is unlikely to be compensated by any positive effects and thus is unlikely to be found compatible with the functioning of the EEA Agreement.

5.6.5. Operating aid schemes

135. If the aid is necessary and proportional to achieve the contribution to regional development and cohesion described in subsection 5.1.3, the negative effects of the aid on competition and trade between EEA States are likely to be compensated by positive effects. However, in some cases, the aid may result in changes to the structure of the market or to the characteristics of a sector or industry which could significantly distort competition through barriers to market entry or exit, substitution effects, or displacement of trade flows. In those cases, the negative effects are unlikely to be compensated by any positive effects.

⁽⁵⁹⁾ These entry barriers include legal barriers (in particular intellectual property rights), economies of scale and scope, and access barriers to networks and infrastructure. If the aid concerns a market where the aid beneficiary is an incumbent, potential barriers to entry may exacerbate the potential substantial market power wielded by the aid beneficiary and thus the possible negative effects of that market power.

⁽⁶⁰⁾ Where there are strong buyers in the market, it is less likely that an aid beneficiary can increase prices vis-à-vis these strong buyers.

5.7. Transparency

136. EEA EFTA States must publish the following information in the European Commission's transparency award module ⁽⁶¹⁾ or on a comprehensive state aid website, at national or regional level:
- 1) the full text of the individual aid granting decision or the approved aid scheme and its implementing provisions, or a link to it;
 - 2) information on each individual aid award exceeding EUR 100 000, using the structure in Annex VIII.
137. As regards aid granted to ETC projects, the information referred to in paragraph 136 must be placed on the website of the EEA State in which the Managing Authority ⁽⁶²⁾ concerned is located. Alternatively, the participating EEA States may decide that each of them is to provide the information relating to the aid measures within their territory on the respective websites.
138. EEA EFTA States must organise their comprehensive state aid websites, as referred to in paragraph 136, in such a way as to allow easy access to the information. Information must be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. The general public must be allowed to access the website without any restrictions, including prior user registration.
139. For schemes in the form of tax advantages, the conditions set out in paragraph 136.2 will be considered to be fulfilled if EEA EFTA States publish the required information on individual aid amounts in the following ranges (in EUR million):
- 0.1-0.5;
 - 0.5-1;
 - 1-2;
 - 2-5;
 - 5-10;
 - 10-30;
 - 30-60;
 - 60-100;
 - 100-250; and
 - 250 and over.
140. The information referred to in paragraph 136.2 must be published within six months from the date of award of the aid, or, for aid in the form of tax advantages, within one year from the date the tax declaration is due ⁽⁶³⁾. For aid that is unlawful but subsequently found to be compatible, EEA EFTA States must publish this information

⁽⁶¹⁾ "State Aid Transparency Public Search", available at the following website: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

⁽⁶²⁾ As defined in Article 21 of Regulation (EC) No 1299/2013.

⁽⁶³⁾ If there is no formal requirement for an annual declaration, 31 December of the year for which the aid was granted will be considered as the granting date for encoding purposes.

within six months from the date of ESA's decision declaring the aid compatible. To enable the enforcement of state aid rules under the EEA Agreement, the information must be available for at least 10 years from the date on which the aid was granted.

141. ESA will publish on its website the link to the state aid website referred to in paragraph 136.

6. EVALUATION

142. To further ensure that distortion of competition and trade is limited, ESA may require that aid schemes, as referred to in paragraph 143, are subject to an *ex post* evaluation. Evaluations will be carried out for schemes where the potential distortion of competition and trade is particularly high, i.e. that may risk significantly restricting or distorting competition if implementation is not reviewed in due time.
143. *Ex post* evaluation may be required for schemes with large aid budgets, or containing novel characteristics, or when significant market, technology or regulatory changes are foreseen. In any case, evaluation will be required for schemes with a state aid budget or accounted expenditure over EUR 150 million in any given year or EUR 750 million over their total duration, i.e. the combined duration of the scheme and any predecessor scheme covering a similar objective and geographical area, starting from 1 January 2022. Given the objectives of the evaluation, and to avoid putting a disproportionate burden on EEA EFTA States, *ex post* evaluations are only required for aid schemes the total duration of which exceeds three years, starting from 1 January 2022.
144. The *ex post* evaluation requirement may be waived for aid schemes that are an immediate successor of a scheme covering a similar objective and geographical area that has been subject to an evaluation, delivered a final evaluation report in compliance with the evaluation plan approved by ESA and has not generated any negative findings. Where the final evaluation report of a scheme is not in compliance with the approved evaluation plan, that scheme must be suspended with immediate effect.
145. The aim of the evaluation should be to verify whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, in particular the necessity and the effectiveness of the aid measure in the light of its general and specific objectives. It should also assess the impact of the scheme on competition and trade.
146. For aid schemes subject to the evaluation requirement according to paragraph 143, EEA EFTA States must notify a draft evaluation plan, which will form an integral part of ESA's assessment of the scheme, as follows:
- 1) together with the aid scheme, if the state aid budget of the scheme exceeds EUR 150 million in any given year or EUR 750 million over its total duration;
 - 2) within 30 working days following a significant change that increases the budget of the scheme to over EUR 150 million in any given year or EUR 750 million over the total duration of the scheme;
 - 3) within 30 working days following the recording in official accounts of expenditure under the scheme in excess of EUR 150 million in any year.

147. The draft evaluation plan must be in line with the common methodological principles provided by ESA ⁽⁶⁴⁾. EEA EFTA States must publish the evaluation plan approved by ESA.
148. The *ex post* evaluation must be carried out by an expert independent from the aid granting authority on the basis of the evaluation plan. Each evaluation must include at least one interim and one final evaluation report. EEA EFTA States must publish both reports.
149. The final evaluation report must be submitted to ESA in due time to assess any prolongation of the aid scheme and at the latest nine months before its expiry. That period may be reduced for schemes triggering the evaluation requirement in their last two years of implementation. The precise scope and arrangements for each evaluation will be set out in the decision approving the aid scheme. The notification of any subsequent aid measure with a similar objective must describe how the results of the evaluation have been taken into account.

7. REGIONAL AID MAPS

150. In this section, ESA lays down criteria for identifying the areas that fulfil the conditions of Article 61(3)(a) and (c) of the EEA Agreement. The areas that fulfil those conditions and which EEA EFTA States wish to designate as 'a' or 'c' areas ⁽⁶⁵⁾ must be identified in a regional aid map, which must be notified to and approved by ESA before regional aid can be awarded to undertakings located in the designated areas.
151. The maps must also specify the maximum aid intensities that apply in those areas during the period of validity of the approved map.
152. To maintain the incentive effect of the aid, where aid applications for discretionary aid measures were introduced already before the start of the period of validity of the map, the "aid amount deemed necessary" identified in the original aid application must not be amended retroactively after the start of works on the project to justify a higher aid intensity that might be available under these Guidelines.
153. For automatic aid schemes in the form of a tax advantage, the maximum aid intensities available under these Guidelines may only be applied to projects started on or after the date on which the increase of the relevant maximum aid intensity became applicable under the relevant national rules. For projects started before that date, the maximum aid intensity approved under the previous regional aid map will continue to apply.

7.1. Population coverage eligible for regional aid

154. Given that the award of regional state aid derogates from the general prohibition of state aid laid down in Article 107(1) of the Treaty on the Functioning of the European Union, the Commission considers that the combined population of 'a' and 'c' areas in the EU27 must be lower than that in non-designated areas. The total coverage of the designated areas in the EU27 should therefore be less than 50% of the EU27's population.

⁽⁶⁴⁾ Based on the Commission staff working document, Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final, or any of its successors.

⁽⁶⁵⁾ Sparsely populated and very sparsely populated areas should also be identified on the regional aid map.

155. In its Guidelines on regional State aid for 2014-2020 ⁽⁶⁶⁾ the Commission set the overall coverage of ‘a’ and ‘c’ areas at 47% of the EU28 population. Given the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the EU, the Commission considers that an increase to 48% of the overall EU27 population coverage is appropriate.
156. Accordingly, for the Member States, the overall maximum coverage of ‘a’ and ‘c’ areas is set at 48% of the EU27 population in the current Commission Guidelines on regional State aid ⁽⁶⁷⁾.
- 156a. ESA shares the Commission’s view. Consequently, a corresponding overall coverage ceiling for the whole of the EEA, which includes the EEA EFTA States, should be set in the present Guidelines. This EEA-wide ceiling is found by adding the population of the EEA EFTA States to the calculation of the coverage ceiling established in the Commission Guidelines. Accordingly, for the purpose of the present Guidelines, the overall maximum coverage of ‘a’ and ‘c’ areas is set at 48% of the total EEA population, using Eurostat data for 2018.

7.2. The derogation in Article 61(3)(a)

157. Article 61(3)(a) of the EEA Agreement 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 to be compatible with the functioning of the EEA Agreement. According to the Court of Justice, ‘the use of the words “abnormally” and “serious” in Article (107)(3)(a) [of the Treaty on the Functioning of the European Union] shows that the exemption concerns only areas where the economic situation is extremely unfavourable in relation to the [Union] as a whole’ ⁽⁶⁸⁾.
158. ESA considers that the conditions of Article 61(3)(a) of the EEA Agreement are fulfilled in statistical regions at level 2 that have a gross domestic product (GDP) per capita below or equal to 75 % of the EEA average ⁽⁶⁹⁾.
159. Therefore EEA EFTA States may designate the following areas as ‘a’ areas:
- 1) statistical regions at level 2 whose GDP per capita in purchasing power standard ⁽⁷⁰⁾ is below or equal to 75% of the EEA average (based on the average of the last three years for which Eurostat data are available ⁽⁷¹⁾);
 - 2) [...].
160. Annex I sets out the eligible ‘a’ areas by EEA EFTA State. At the time of the adoption of these Guidelines, no region in the EEA EFTA States qualified for the derogation under Article 61(3)(a) of the EEA Agreement.

⁽⁶⁶⁾ OJ C 209, 23.7.2013, p. 1.

⁽⁶⁷⁾ This ceiling is set using Eurostat population data for 2018. The ceiling will correspond to 48.00% of the EU27_2020 – (European Union - 27 countries (from 2020)).

⁽⁶⁸⁾ Judgment of 14 October 1987, *Germany v Commission*, Case 248/84, EU:C:1987:437, paragraph 19; judgment of 14 January 1997, *Spain v Commission*, C-169/95, EU:C:1997:10, paragraph 15; and judgment of 7 March 2002, *Italy v Commission*, C-310/99, EU:C:2002:143, paragraph 77.

⁽⁶⁹⁾ [...].

⁽⁷⁰⁾ In all subsequent references to GDP per capita, GDP is measured in PPS.

⁽⁷¹⁾ The data cover the period 2016-2018. In all subsequent references to GDP per capita in relation to the EEA average, data are based on the average of Eurostat regional data for 2016-2018 (as updated on 23.3.2020).

7.3. The derogation in Article 61(3)(c)

161. Article 61(3)(c) of the EEA Agreement provides that ‘aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’ may be considered to be compatible with the functioning of the EEA Agreement. According to the Court of Justice, ‘[t]he exemption in Article (107)(3)(c) [of the Treaty on the Functioning of the European Union] [...] permits the development of certain areas without being restricted by the economic conditions laid down in Article [107](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’ ⁽⁷²⁾. In ESA’s view, the same applies under Article 61(3)(c) of the EEA Agreement.
162. The maximum coverage for ‘c’ areas in the EEA (‘c’ coverage’) is obtained by subtracting the population of the eligible ‘a’ areas in the EEA from the overall EEA-wide maximum coverage laid down in paragraph 156a.
163. There are two categories of ‘c’ areas:
- 1) areas that fulfil certain set conditions and that an EEA EFTA State may therefore designate as ‘c’ areas without any further justification (‘predefined ‘c’ areas’);
 - 2) areas that an EEA EFTA State may, at its own discretion, designate as ‘c’ areas provided that the EEA EFTA State demonstrates that such areas fulfil certain socioeconomic criteria (‘non-predefined ‘c’ areas’).

7.3.1. Predefined ‘c’ areas

7.3.1.1. Specific allocation of ‘c’ coverage for predefined ‘c’ areas

164. [...] ⁽⁷³⁾.
165. ESA considers that EEA EFTA States must have sufficient ‘c’ coverage to be able to designate as ‘c’ areas the areas with low population density.
166. The following areas are considered as predefined ‘c’ areas:
- 1) [...];
 - 2) sparsely populated areas: statistical regions at level 2 with fewer than 8 inhabitants per km² or statistical regions at level 3 with fewer than 12.5 inhabitants per km² (based on Eurostat data on population density for 2018).
167. Annex I sets out the specific allocation of predefined ‘c’ coverage by EEA EFTA State. This population allocation may only be used to designate predefined ‘c’ areas.

7.3.1.2. Designation of predefined ‘c’ areas

168. EEA EFTA States may designate as ‘c’ areas the predefined ‘c’ areas referred to in paragraph 166.
169. For sparsely populated areas, EEA EFTA States should in principle designate statistical regions at level 2 with fewer than 8 inhabitants per km² or statistical regions at level 3 with fewer than 12.5 inhabitants per km². However, EEA EFTA States may designate parts of statistical regions at level 3 with fewer than 12.5 inhabitants per km²

⁽⁷²⁾ *Germany v Commission*, Case 248/84, *op. cit.*, paragraph 19.

⁽⁷³⁾ [...].

or other contiguous areas adjacent to those statistical regions at level 3, provided that these areas have fewer than 12.5 inhabitants per km². For very sparsely populated areas, EEA EFTA States may designate statistical regions at level 2 with fewer than 8 inhabitants per km² or other smaller contiguous areas adjacent to those statistical regions at level 2, provided that these areas have fewer than 8 inhabitants per km² and that the population of the very sparsely populated areas taken together with the sparsely populated areas does not exceed the specific allocation of 'c' coverage referred to in paragraph 167.

7.3.2. *Non-predefined 'c' areas*

7.3.2.1. Method for allocating non-predefined 'c' coverage among EEA EFTA States

170. The maximum coverage for non-predefined 'c' areas in the EEA is obtained by subtracting the population of the eligible 'a' areas and of the predefined 'c' areas for the EU27 and the EEA EFTA States from the EEA-wide overall maximum coverage laid down in paragraph 156a. The non-predefined 'c' coverage is allocated among the EEA EFTA States by applying the method set out in Annex III.

7.3.2.2. Safety net and minimum population coverage

171. To ensure continuity in the regional aid maps and a minimum scope of action for all Member States, the Commission considers that no Member State should lose more than 30% of its total coverage compared to the period 2017-2020 and that all Member States should have a minimum population coverage.

172. Therefore, by way of derogation from the overall maximum coverage laid down in paragraph 156 of the Commission Guidelines, the Commission increased the 'c' coverage for each Member State so that:

- 1) the total 'a' and 'c' coverage of each Member State concerned is not reduced by more than 30% compared to the period 2017-2020 ⁽⁷⁴⁾;
- 2) all Member States have a population coverage of at least 7.5% of the national population ⁽⁷⁵⁾.

172a. ESA shares the Commission's views. Consequently, the 'c' coverage is increased so that Liechtenstein receives the minimum population coverage of 7.5% of the national population.

173. Annex I sets out the non-predefined 'c' coverage, including the safety net and the minimum population coverage, by EEA EFTA State.

7.3.2.3. Designation of non-predefined 'c' areas

174. ESA considers that the criteria used by EEA EFTA States for designating 'c' areas should reflect the range of situations in which granting regional aid may be justified. The criteria should therefore address the socioeconomic, geographical or structural problems likely to be encountered in 'c' areas and should provide sufficient safeguards that granting regional state aid will not affect trading conditions to an extent contrary to the common interest.

⁽⁷⁴⁾ This aspect of the safety net applies to Germany, Ireland, Malta, and Slovenia.

⁽⁷⁵⁾ This minimum population coverage applies to Denmark and Luxembourg.

175. Therefore, EEA EFTA States may designate as 'c' areas the non-predefined 'c' areas defined on the basis of the following criteria:

- 1) Criterion 1: contiguous areas of at least 100 000 inhabitants ⁽⁷⁶⁾. These are to be located in statistical regions at level 2 or level 3 that have:
 - (i) a GDP per capita below or equal to the EEA average, or;
 - (ii) an unemployment rate above or equal to 115% of the national average ⁽⁷⁷⁾.
- 2) Criterion 2: statistical regions at level 3 of fewer than 100 000 inhabitants that have:
 - (i) a GDP per capita below or equal to the EEA average, or;
 - (ii) an unemployment rate above or equal to 115% of the national average.
- 3) Criterion 3: islands or contiguous areas characterised by similar geographical isolation (for example, peninsulas or mountain areas) that have:
 - (i) a GDP per capita below or equal to the EEA average ⁽⁷⁸⁾, or;
 - (ii) an unemployment rate above or equal to 115% of the national average ⁽⁷⁹⁾, or;
 - (iii) fewer than 5 000 inhabitants.
- 4) Criterion 4: statistical regions at level 3, or parts of statistical regions at level 3 that form contiguous areas, that are adjacent to an 'a' area or that share a land border with a country outside the EEA or the European Free Trade Association (EFTA).
- 5) Criterion 5: contiguous areas of at least 50 000 inhabitants ⁽⁸⁰⁾ that are undergoing major structural change or are in serious relative decline, provided that such areas are not located in statistical regions at level 3 or contiguous areas that fulfil the conditions to be designated as predefined areas or under Criteria 1 to 4 ⁽⁸¹⁾.

⁽⁷⁶⁾ This population threshold will be reduced to 50 000 inhabitants for EEA EFTA States that have a non-predefined 'c' coverage of less than 1 million inhabitants or to 10 000 inhabitants for EEA EFTA States whose national population is below 1 million inhabitants.

⁽⁷⁷⁾ For unemployment, calculations should be based on regional data published by the national statistical office, using the average of the last three years for which such data are available (at the moment of the notification of the regional aid map). Except as otherwise indicated in these Guidelines, the unemployment rate in relation to the national average is calculated on this basis.

⁽⁷⁸⁾ To calculate whether such islands or contiguous areas have a GDP per capita below or equal to the EEA average, the EEA EFTA State may use data provided by their national statistical office or other recognised sources.

⁽⁷⁹⁾ To calculate whether such islands or contiguous areas have an unemployment rate above or equal to 115% of the national average, EEA EFTA States may use data provided by their national statistical office or other recognised sources.

⁽⁸⁰⁾ This population threshold will be reduced to 25 000 inhabitants for EEA EFTA States that have a non-predefined 'c' coverage of fewer than 1 million inhabitants, to 10 000 inhabitants for EEA EFTA States whose total population is below 1 million inhabitants, or to 5 000 inhabitants for islands or contiguous areas characterised by similar geographical isolation.

⁽⁸¹⁾ For the purpose of applying Criterion 5, EEA EFTA States must demonstrate that the area is undergoing major structural change or is in serious relative decline by comparing the areas concerned with the situation of other areas in the same EEA EFTA State or in other EEA States on

176. For the purpose of applying the criteria set out in paragraph 175, the concept of contiguous areas refers to whole local administrative units (LAU) ⁽⁸²⁾ or to a group of LAU ⁽⁸³⁾. A group of LAU will be considered to form a contiguous area if each area in the group shares an administrative border with another area in the group ⁽⁸⁴⁾.
177. Compliance with the population coverage allowed for each EEA EFTA State will be assessed on the basis of the most recent data on the total resident population of the areas concerned, as published by the national statistical office.

7.4. Maximum aid intensities applicable to regional investment aid

178. ESA considers that the maximum aid intensities applicable to regional investment aid must take into account the nature and scope of the disparities between the levels of development of the different areas in the EEA. The aid intensities should therefore be higher in 'a' areas than in 'c' areas.

7.4.1. Maximum aid intensities in 'a' areas

179. The aid intensity for large enterprises in 'a' areas must not exceed:
- 1) 50% in statistical regions at level 2 whose GDP per capita is below or equal to 55% of the EEA average;
 - 2) 40% in statistical regions at level 2 whose GDP per capita is above 55% and below or equal to 65% of the EEA average;
 - 3) 30% in statistical regions at level 2 with a GDP per capita above 65% of the EEA average.

180. [...].

181. The aid intensities set in paragraph 179 may be increased in the areas referred to in sections 7.4.4 and 7.4.5 to the extent that the aid intensity for large enterprises in the area concerned does not exceed 70%.

7.4.2. Maximum aid intensities in 'c' areas

182. The aid intensity for large enterprises must not exceed:
- 1) 20% in sparsely populated areas and in areas (statistical regions at level 3 or parts of statistical regions at level 3) that share a land border with a country outside the EEA or the EFTA;

the basis of socioeconomic indicators concerning structural business statistics, labour markets, household accounts, education, or other similar indicators. For this purpose, EEA EFTA States may use data provided by their national statistical office or other recognised sources. [...].

⁽⁸²⁾ The Local Administrative Units (LAU) are defined in Annex III of Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS) as amended by the Commission Delegated Regulation 2019/1755 of 8 August 2019 (OJ L 270, 24.10.2019). As identified in footnote 30, this regulation has not been incorporated into the EEA Agreement. However, in order to achieve common definitions in an ever-increasing demand for statistical information at a regional level, the Statistical Office of the European Union, Eurostat, and the National Institutes of the Candidate countries and EFTA have agreed that statistical regions be established similar to the NUTS classification.

⁽⁸³⁾ The EEA EFTA State may nevertheless designate parts of a LAU, provided that the population of the LAU concerned exceeds the minimum population required for contiguous areas under Criteria 1 or 5 (including the reduced population thresholds for those criteria) and that the population of the parts of that LAU is at least 50% of the minimum population required under the applicable criterion.

⁽⁸⁴⁾ For islands, administrative borders include maritime borders with other administrative units of the EEA EFTA State concerned.

- 2) 15% in former 'a' areas;
- 3) 10% in non-predefined 'c' areas that have a GDP per capita above 100% of the EEA average and an unemployment rate below 100% of the EEA average.
- 4) 15% in other non-predefined 'c' areas;

183. In former 'a' areas, the aid intensity of 15% set in paragraph 182.2) may be increased by up to 5 percentage points until 31 December 2024.

184. If a 'c' area is adjacent to an 'a' area, the aid intensities set in paragraph 182 in the statistical regions at level 3 or parts of statistical regions at level 3 within that 'c' area which are adjacent to the 'a' area may be increased as necessary so that the difference in aid intensity between the two areas does not exceed 15 percentage points.

185. The aid intensities set in paragraph 182 may also be increased in the areas referred to in section 7.4.5.

7.4.3. Increased aid intensities for SMEs

186. The aid intensities laid down in subsections 7.4.1 and 7.4.2 may be increased by up to 20 percentage points for small enterprises or by up to 10 percentage points for medium-sized enterprises ⁽⁸⁵⁾.

7.4.4. Increased aid intensities for territories identified for support from the JTF ⁽⁸⁶⁾

187. [...] ⁽⁸⁷⁾.

7.4.5. Increased aid intensities for regions experiencing population loss

188. The maximum aid intensities laid down in subsection 7.4.1 may be increased by 10 percentage points and the maximum aid intensities laid down in subsection 7.4.2 may be increased by 5 percentage points for statistical regions at level 3 experiencing population loss of more than 10% over the period 2009-2018 ⁽⁸⁸⁾.

7.5. Notification of regional aid maps and their assessment

189. Following the adoption of these Guidelines, each EEA EFTA State should notify to ESA a single regional aid map applicable from 1 January 2022 to 31 December 2027. Each notification should include the information specified in Annex V.

190. ESA will examine for each EEA EFTA State its notified regional aid map and, if the map meets the conditions laid down in these Guidelines, it will adopt a decision approving it. All regional aid maps will be published in the *Official Journal*, and in the EEA Supplement thereto, and will constitute an integral part of these Guidelines.

7.6. Amendments

7.6.1. Population reserve

191. On its own initiative, an EEA EFTA State may decide to establish a reserve of national population coverage consisting of the difference between the maximum population

⁽⁸⁵⁾ The increased aid intensities for SMEs will not apply to aid awarded for large investment projects.

⁽⁸⁶⁾ [...].

⁽⁸⁷⁾ [...].

⁽⁸⁸⁾ See Annex IV.

coverage for that EEA EFTA State, as allocated by ESA⁽⁸⁹⁾, and the coverage used for the 'a' and 'c' areas designated in its regional aid map.

192. If an EEA EFTA State decides to create this reserve, it may, at any time, use the reserve to add new 'c' areas in its map until it reaches the national maximum coverage. For this purpose, the EEA EFTA State may use the most recent socioeconomic data provided by Eurostat or by its national statistical office or other recognised sources. The population of the 'c' areas concerned should be calculated on the basis of the population data used to draw up the initial map.
193. The EEA EFTA State must notify ESA each time it intends to use its population reserve to add new 'c' areas before making such amendments.

7.6.2. *Mid-term review*

194. A mid-term review of the regional aid maps, taking into account updated statistics, will be carried out in 2023. By June 2023, ESA will communicate the details on that mid-term review.

8. **AMENDMENT OF THE GUIDELINES ON REGIONAL STATE AID FOR 2014-2020**

195. In its notification under paragraph 189, an EEA EFTA State may also include an amendment to its regional aid map for 2014-2021⁽⁹⁰⁾ to replace the areas eligible for aid under the Guidelines on regional state aid for 2014-2020 with the areas eligible for aid in the map to be approved by ESA under paragraph 190 of these Guidelines. The reviewed regional aid map will be valid from the date of adoption of the ESA decision on the notified amendment of the regional aid map for 2014-2021 until 31 December 2021. That decision will also indicate the maximum aid intensities applicable in the areas eligible for aid under the amended regional aid map for 2014-2021, corresponding to the maximum aid intensities set out in the Guidelines on regional state aid for 2014-2020. The amended map will constitute an integral part of the Guidelines on regional state aid for 2014-2020, in line with paragraph 157 of those Guidelines.
196. The Guidelines on regional state aid for 2014-2020 are amended as follows:
- 1) Paragraph 20(q) is replaced with the following:

“regional aid map’ means the list of areas designated by an EEA EFTA State in line with the conditions laid down in these Guidelines, or the Guidelines on regional state aid applicable as from 1 January 2022, and approved by ESA;”
 - 2) The following paragraph 161a is inserted after paragraph 161:

“5.6.3. Amendment following the Guidelines on regional state aid applicable as from 1 January 2022

161a. An EEA EFTA State may request an amendment to its regional aid map in line with Section 7.6 of the Guidelines on regional state aid applicable as from 1 January 2022.”

⁽⁸⁹⁾ See Annex I.

⁽⁹⁰⁾ The regional aid map approved by ESA under the Guidelines on regional state aid for 2014-2020 that is applicable for the period 1 July 2014 to 31 December 2021.

9. APPLICABILITY OF REGIONAL AID RULES

197. ESA will apply the principles set out in these Guidelines to assess the compatibility of all notifiable regional aid awarded or intended to be awarded after 31 December 2021.
198. Notifications of regional aid schemes or of aid measures to be awarded after 31 December 2021 cannot be considered complete until ESA has adopted a decision approving the regional aid map for the EEA EFTA State concerned, in line with the arrangements described in subsection 7.5.
199. The implementation of these Guidelines will lead to some changes in the rules applicable to regional aid. Therefore, it is necessary to review the continuing justification for and effectiveness of all existing ⁽⁹¹⁾ regional aid schemes, including investment aid and operating aid schemes, that are due to extend beyond 2021.
200. For these reasons, ESA proposes the following appropriate measures to EEA EFTA States pursuant to Article 1(1) in Part I of Protocol 3:
- 1) EEA EFTA States must limit the application of all existing regional aid schemes to aid intended to be awarded by 31 December 2021 at the latest;
 - 2) EEA EFTA States must amend other existing horizontal aid schemes that give specific treatment for aid to projects in assisted areas in order to ensure that aid to be awarded after 31 December 2021 is in line with the regional aid map applicable on the date the aid is awarded;
 - 3) EEA EFTA States should confirm acceptance of the measures proposed in points 1) and 2) by 31 December 2021.

10. REPORTING AND MONITORING

201. In accordance with Protocol 3 and ESA's Decision No 195/04/COL ⁽⁹²⁾⁽⁹³⁾, EEA EFTA States must submit annual reports to ESA.
202. EEA EFTA States must maintain detailed records regarding all aid measures. These records must contain all information necessary to establish that the conditions regarding eligible costs and maximum aid intensities have been fulfilled. EEA EFTA States must maintain those records for 10 years from the date of award of the aid and must provide them to ESA upon request.

11. REVISION

203. ESA may decide to modify these Guidelines at any time if necessary for reasons associated with competition policy or to take account of other EU policies and international commitments or for any other justified reason.

⁽⁹¹⁾ Aid measures put into effect under the GBER do not qualify as existing aid schemes. Aid schemes put into effect in breach of Article 1(3) of Part I of Protocol 3 do not qualify as existing aid schemes except when they are deemed to be existing aid under Article 15(3) of Part II to that Protocol.

⁽⁹²⁾ ESA's Decision No 195/04/COL of 14 July 2004 on the implementing provisions referred to under Article 27 in Part II of Protocol 3. The consolidated version of the decision is available at: <https://www.eftasurv.int/cms/sites/default/files/documents/2017-Consolidated-version-of-Dec-195-054-COL--002-.pdf>.

⁽⁹³⁾ [...].