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COMMUNICATION FROM THE COMMISSION

**Framework for State Aid measures to support the Clean Industrial Deal
(Clean Industry State Aid Framework – CISAF)**

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COMMUNICATION FROM THE COMMISSION

Framework for State Aid measures to support the Clean Industrial Deal (Clean Industry State Aid Framework – CISAF)

1. INTRODUCTION

1. On [XXX], the Commission adopted the Communication on The Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation. This Framework seeks to accompany the Clean Industrial Deal by setting out how Member States can design State aid measures to support its objectives.
2. The Clean Industrial Deal proposes actions to improve access to affordable energy, to boost demand and supply of clean products, to enable public and private investments, to power the circular economy, to develop international partnerships and to secure skills and quality jobs for social fairness. The Clean Industrial Deal provides a comprehensive workplan for the development in the EU of a competitive, decarbonised industry, offering opportunities for investors and contributing to social cohesion and equity across all regions.

1.1. Need to incentivise investments in Europe

3. To achieve the ambitions of the Clean Industrial Deal, considerable funds will need to be mobilised, mainly from private sources, but, where necessary, incentivised or complemented by public funds.
4. As outlined by the Clean Industrial Deal Communication, investments are needed to further accelerate the roll-out of renewable energy and flexibility sources technologies, to deploy industrial decarbonisation, and to ensure sufficient manufacturing capacity of clean tech. This Communication specifies the points the Commission will apply when assessing State aid measures notified by Member States to contribute to these goals without unduly distorting competition and while preserving cohesion objectives.
5. Public support will be necessary to advance decarbonisation efforts. This Communication provides Member States with a longer planning horizon and businesses with investment predictability and security.
6. Crowding-in private investments by way of financial instruments is of vital importance. For example, Member States can co-invest with private investors on market terms.¹ At the same time, certain groups of private investors, such as pension funds and insurers remain risk averse despite their capacity to invest in projects. Under certain conditions set out in this Communication, Member States can further incentivise such private investors through the de-risking of investments in portfolios of projects. Such de-risking schemes must ensure additionality, meaning that through

¹ If a public authority invests on market terms (for example based on *pari passu* terms alongside private investors or where market conformity is established based in other instruments such as benchmarking), the instruments do not contain aid. See Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1–50, section 4.2.3.

reducing the risks associated with the investment they crowd in private investors that otherwise would not have invested in these type of projects. To ensure that the aid is passed on to the relevant projects to the largest extent possible, the de-risking schemes should limit by their design the aid to the investors to the minimum necessary.

7. In addition to support for the production of certain products, Member States may also introduce tax incentives in the form of accelerated depreciation, including immediate expensing, for the acquisition of clean technology assets required for the transition to a net-zero economy. Where Member States implement such incentives in a general manner to users of clean technology, which directly contributes to the transition towards net-zero economy by reducing or removing greenhouse gas emissions, without favouring certain undertakings, such support would in principle not fall within the scope of Article 107(1) of the Treaty. Where such incentives are selective and therefore involve State aid, the Commission will consider such aid compatible with the internal market based on the conditions set out in this Communication.

1.2. Simplification required for specific measures ensuring acceleration

8. EU State aid control contributes to the EU internal market not being fragmented and the level playing field being preserved. The integrity of the internal market is important to withstand external pressure and to avoid subsidy races between Member States to the detriment of cohesion within the Union.
9. By setting out compatibility rules for measures aimed at developing economic activities via specific investments required to achieve the common objectives outlined in the Clean Industrial Deal, this Communication complements the existing State aid guidelines. In as far as this Communication foresees simplified compatibility rules compared to other State aid guidelines, including the Guidelines on State aid for climate, environmental protection and energy ('CEEAG')², this is justified in view of the need to accelerate specific investments and in view of the low risk of potential effects on trade and competition in the internal market posed by the measures in scope of this Communication. The compatibility rules outlined in this Communication are based on the case practice and relevant experience gathered by the Commission also from the application of the Temporary Crisis and Transition Framework ('TCTF').³

2. DEFINITIONS

10. The following definitions apply across all the sections of this Communication:

² Guidelines on State aid for climate, environmental protection and energy 2022, OJ C 80, 18.2.2022, p. 1.

³ Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3), as amended by Commission Communications C(2023)8045 (OJ C1188, 21.11.2023, ELI: <http://data.europa.eu/eli/C/2023/1188/oj>) ('First Amendment to the Temporary Crisis and Transition Framework') and C(2024)3123 (OJ C3113, 2.5.2024, ELI: <http://data.europa.eu/eli/C/2024/3113/oj>) ('Second Amendment to the Temporary Crisis and Transition Framework'). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), ('Temporary Crisis Framework'), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

- (a) ‘claw-back mechanism’ means a mechanism by which the Member State receives an appropriate share of any additional surpluses generated by the aided project above the profits forecasted in the initial notified funding gap. Such a surplus is defined as the delta between the actual *ex post* cash-flows of the project and the forecasted cash-flows of the factual scenario on which the funding gap is calculated. The existence of such a potential surplus will be verified [annually] based on separate accounting for the aided project, verified by an independent auditor. It applies for the duration of the financial projections underlying the funding gap assessment and includes a terminal value of the project at the end of the planning horizon based on usual economic methodologies;
- (b) ‘competitive bidding process’ means a bidding process that is (i) open, clear, transparent and non-discriminatory, based on objective criteria, defined *ex ante* in accordance with the objective of the measure and minimising the risk of strategic bidding; (ii) with at least 70 % in the total selection criteria used for ranking bids defined in terms of aid per unit of environmental protection or aid per unit of energy (such as aid per unit of reference energy output or capacity installed or flexibility service provided under section 4, or EUR per tonne of CO₂ reduced or unit of energy saved under section 5); (iii) the criteria are published sufficiently⁴ in advance of the deadline for submitting applications to enable effective competition; (iv) the budget or volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid⁵; (v) the aid amount is determined on the basis of the initial bid or a clearing price; in order to determine the costs of the project, any State aid or funding from centrally managed EU funds granted for the same project must be added to the bid for the purpose of the ranking the bids; and (vi) *ex post* adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) are avoided as they may undermine the efficiency of the process’s outcome;
- (c) ‘funding gap’ means the difference between the net present value (‘NPV’) of the project (the factual scenario) taking into account all expected future positive and negative cash-flows including taxes generated by the investment over its lifetime and a terminal value, discounted using the beneficiary’s weighted average cost of capital (‘WACC’), and the NPV of all expected cash-flows related to the counterfactual investment. All scenarios must be sufficiently proven, i.e. using realistic assumptions as part of a credible business plan. Where the counterfactual scenario corresponds to business as usual or to the beneficiary not carrying out any activity, the NPV of the counterfactual is deemed to correspond to zero and the funding gap can be approximated to the negative NPV of the investment in the factual scenario;

⁴ The Commission considers that this normally means at least 6 weeks in advance unless a shorter timeframe can be justified based on the specific circumstances of a measure.

⁵ The budget or volume tendered must be set to ensure that the bidding process is effectively competitive. The Member State must prove the plausibility that the budget or volume tendered will match the potential offer of projects. This may be done with reference to past auctions, to technology targets in the National Energy and Climate Plan, or by introducing a safeguard mechanism in case of risk of undersubscribed tenders. In case of repeated undersubscription of competitive bidding processes, the Member State must introduce remedies for any future schemes that it notifies to the Commission for the same technology or projects.

- (d) ‘gross grant equivalent’ means the discounted amount of 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 the Commission, whichever is earlier, on the basis of the reference rate applicable at that date (the reference rate used as a discount rate is equal to the base rate increased by a fixed margin of 100 basis points)⁶;
- (e) ‘National Regulatory Authority’ or ‘NRA’ means the regulatory authority designated by each Member State pursuant to Article 57(1) of Directive (EU) 2019/944⁷;
- (f) ‘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 or service 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;
- (g) ‘small and medium-sized enterprise’ (SME), means an undertaking that fulfils the conditions laid down in the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises;
- (h) ‘start of works’ means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works;
- (i) ‘private investors’ mean investors who, irrespective of their ownership structure, pursue a purely commercial interest, use their own resources and bear the full risk in respect of their investment, and include, in particular: credit institutions investing at own risk and from own resources, private endowments and foundations, family offices and business angels, corporate investors, insurance undertakings, pension funds, academic institutions, as well as natural persons who either conduct an economic activity or not. The European Investment Bank, the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a legal entity that carries out financial activities on a professional basis which has been given a mandate by a Member State or a Member State’s entity at central, regional or local level to carry out development or promotional activities (national promotional bank or another promotional institution), will not be considered private investors.

⁶ See Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

⁷ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) (OJ L 158, 14.6.2019, p. 125).

3. COMPATIBILITY ASSESSMENT UNDER ARTICLE 107(3), POINT (C), OF THE TREATY

11. On the basis of Article 107(3), point (c), of the Treaty, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the Union (positive condition), where such aid does not adversely affect trading conditions to an extent contrary to the common interest (negative condition).

3.1.1. *Positive condition: the aid facilitates the development of an economic activity*

12. As regards the positive condition that the aid facilitates the development of an economic activity, the Commission considers that aid under this Communication aims at incentivising investments and activities in certain sectors that contribute to the objectives defined in the Clean Industrial Deal Communication, thereby facilitating the development of specific economic activities within the scope of the relevant sections of this Communication.

13. State aid needs to have an incentive effect, meaning that it induces the beneficiary to undertake an investment or activity that it would not undertake, or would carry out in a restricted or different manner, absent the aid. This is presumed where the start of works on the project or activity only takes place after a written aid application by the beneficiary to the national authorities⁸. Aid can however also be considered to have an incentive effect although the start of works happened before the aid application, where (i) the aid is granted automatically in accordance with objective and non-discriminatory criteria and without further exercise of discretion by the Member State, and (ii) the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax advantages. Aid to private investors can be considered to have an incentive effect where it incentivises private investors to provide funding to a portfolio of potentially viable eligible projects above the levels of funding provided in the absence of such incentives or to assume extra risk, or both.

14. Unless in situations where a specific counterfactual scenario needs to be provided based on the conditions outlined in the applicable sections of this Communication, for the investments and measures specified in this Communication, the Commission presumes that in the absence of the aid, beneficiaries would continue their activities without changes and provided that this does not entail a breach of Union law. Aid granted for investments that merely ensure compliance with Union standards⁹ that are in force at the moment of granting the aid does not have an incentive effect.

15. If the supported project or activity, or the aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a violation of relevant Union law, the aid cannot be declared compatible with the internal market.

16. [placeholder for exclusion of undertakings under sanctions]

⁸ For the avoidance of doubt, such an aid application can pre-date this Communication.

⁹ 'Union standard' means Union standard within the meaning of point 19(89) CEEAG.

3.1.2. *Negative condition: the aid does not unduly affect trading conditions to an extent contrary to the common interest*

17. As regards the second (negative) condition, to ensure that the aid does not unduly affect trading conditions to an extent contrary to the common interest, the Commission assesses the necessity, appropriateness and proportionality of the aid, that undue negative effects on competition and trade are avoided and that the requirements on monitoring and reporting in section 8 are complied with.
18. Any aid must be necessary, meaning that it must be targeted towards a situation where it can bring about a material development that the market alone cannot deliver, for example by remedying market failures in relation to the projects for which the aid is awarded. In view of the need to accelerate the eligible investments and activities under this Communication, the Commission considers that the market alone would not be able to sufficiently deliver the necessary level of investments or activities within the timeline necessary to achieve a clean, just and competitive transition. The Commission therefore presumes that measures falling within the scope of this Communication and complying with all conditions in the applicable sections are necessary.
19. The Commission acknowledges in the Clean Industrial Deal Communication that financial incentives are required to incentivise necessary additional investments and that other policy instruments alone are not sufficient to achieve those goals. The Commission therefore presumes that State aid within the scope of this Communication is, in principle, an appropriate measure to incentivise the investments and activities eligible for aid provided all applicable conditions under this in the applicable sections are complied with.
20. Aid under this Communication shall not be granted to undertakings in difficulty¹⁰.
21. Aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided project or activity. Proportionality is generally ensured if the aid amounts are determined through a competitive bidding process, because it provides a reliable estimate of the minimum aid required by potential beneficiaries. The Commission considers that the use of competitive bidding processes is particularly appropriate for measures aimed at a large number of sufficiently comparable projects, e.g. in the field of renewable energy production for larger projects applying mature technologies. Aid for non-fossil flexibility support schemes (point 58 below) and aid for capacity mechanisms (point 62 and Annex I below) shall be granted through a competitive bidding process, in line with sectoral legislation. In case of aid to accelerate the rollout of renewable energy, where competitive bidding processes are not suitable, i.e. in case of small-scale installations¹¹ and demonstration projects including in light of the acceleration objective of this Communication, Member States may determine aid amounts administratively based on maximum aid intensities or by reference to the funding gap in line with the specific conditions provided in the applicable section. This Communication provides the specific applicable aid limits in each section that the Commission will consider proportionate.

¹⁰ Within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p.1.

¹¹ [Add reference to definition of small projects].

22. Unless otherwise provided in the specific sections, aid under this Communication may be granted in the form of direct grants, or other forms such as tax advantages¹² including tax credits, subsidised interest rates on new loans or guarantees on new loans. Where the aid is provided in a form other than grants, the amount of aid is expressed in gross grant equivalent, and the nominal amount of the tax advantage or the nominal amount of the underlying new loan or guarantee shall not exceed the eligible costs (where applicable).
23. Under this Communication, when assessing aid in favour of a beneficiary that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered¹³.
24. Subject to the specific rules in section 6.3, where Member States decide to provide aid in the form of guarantees or loans that are channelled through credit institutions and other financial institutions as financial intermediaries, and in order to ensure that the aid granted is passed on directly, to the largest extent possible, to the final beneficiaries, the following conditions shall be respected:
- (a) if guarantees are provided to credit institutions and other financial institutions as financial intermediaries, these financial intermediaries should, to the largest extent possible, pass on the advantages of the public guarantees to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates than without such public guarantees;
 - (b) if loans are provided to credit institutions and other financial institutions as financial intermediaries, these financial intermediaries should, to the largest extent possible, pass on the advantages of the subsidised interest rates on loans to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries without conditioning the granting of subsidised loans under this section to refinancing existing loans.
25. Based on the relevant experience and in view of the objectives pursued by the measures in scope of this Communication, the Commission presumes that such measures will not result in any manifestly negative effects on competition and trade in as far as they comply with all conditions in the applicable sections.
26. Aid granted under this Communication shall not be conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. Such condition would appear to be harmful to the internal market. [Without prejudice to the specific safeguards included in section 4 of this Communication, this is irrespective of the

¹² The aid cannot concern the reduction of taxes or levies which reflect the essential costs of providing energy or related services (for example, network charges or charges financing capacity mechanisms).

¹³ See judgment of the Court of First Instance of 13 September 1995, TWD Textilwerke Deggendorf GmbH v. Commission, Joined Cases T-244/93 and T-486/93, ECLI:EU:T:1995:160.

number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.]

27. As a final step under Article 107(3), point (c), of the Treaty, the Commission has to balance the negative effects on competition and trading conditions of the aid measure with the positive effects of the planned aid on the supported economic activities, including its contribution to the clean, just and competitive transition and the Clean Industrial Deal objectives. Provided that the measures within the scope of this Communication comply with all conditions in the applicable sections, the Commission presumes that the positive effects of the planned aid outweigh the negative effects on competition and trading conditions inherent in any aid measure.

3.1.3. Cumulation with other State aid and combination with centrally managed EU funds

28. Save as specified otherwise in this Communication:

- (a) aid under this Communication may be cumulated with any other State aid, or combined with centrally managed funds, as long as those measures concern different identifiable eligible costs;
- (b) aid under this Communication may be cumulated with any other State aid, or combined with centrally managed funds, in relation to the same eligible costs, partly or fully overlapping, provided such cumulation does not exceed the highest support intensity or amount applicable under any of the relevant rules.

4. AID TO ACCELERATE THE ROLLOUT OF RENEWABLE ENERGY

29. Beyond the existing possibilities available in accordance with Article 107(3), point (c), of the Treaty under the CEEAG, the Clean Industrial Deal recognises the need to fast-track the rollout of renewable energy sources and thereby contributing to the overall global competitiveness of the economic activities in scope of this Communication. In this context, it is essential to facilitate investments to accelerate and expand the availability of renewable energy in a cost-effective way with a view to quickly reducing dependency on fossil fuels imports, accelerate the energy transition and achieve lower and less volatile energy prices.

30. The increase in the share of renewable sources in the energy system might result in a higher variability of energy generation patterns. Therefore, the accompanying rollout of flexibility measures and capacity mechanisms may be necessary to ensure that increasingly decarbonised electricity systems remain secure and deliver affordable energy.

Aid schemes to accelerate the rollout of renewable energy

31. The Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, provided they comply with this section, together with section 3, aid measures to support:

- (a) investments for the production of energy from renewable sources as defined in Article 2 point (1) of Directive (EU) 2018/2001¹⁴, including the production of renewable fuels of non-biological origin (RFNBOs) but excluding the production of electricity from RFNBOs;
 - (b) investments in storage for RFNBOs, biofuels, bioliquids, biogas (including biomethane) and biomass fuels that obtains at least 75 % of its content from a directly connected RFNBOs, biofuels, bioliquids, biogas or biomass fuels production facility, on an annual basis.
32. In addition to the aid measures described in point 31(31), the Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, investment aid measures to support electricity storage¹⁵ and thermal storage¹⁶, provided they comply with this section, together with section 3.
33. Where the aid is granted for the production of RFNBOs, the Member State must ensure that the RFNBOs are produced from renewable energy sources in accordance with the methodologies set out in Directive (EU) 2018/2001 and its implementing or delegated acts.
34. Where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts.
35. With the exception of offshore wind, hydropower and renewable hydrogen production installations, supported projects must be completed and be in operation within [36] months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met.
36. Aid shall be granted on the basis of a scheme with an estimated capacity volume and budget¹⁷. A scheme may be limited to one or several technologies covered in points 31(31) and 32(32) but must not include any artificial limitation or discrimination, including in the award of licences, permits or concessions when they are required.
37. The Member State must ensure compliance with the ‘do no significant harm’ principle.

¹⁴ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

¹⁵ Electricity storage means deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy.

¹⁶ Thermal storage means deferring the final use of thermal energy to a moment later than when it was generated, or the conversion of electrical or thermal energy into a form of energy which can be stored, the storing of such energy, and, where appropriate, the subsequent conversion or reconversion of such energy into thermal energy for final use (i.e., heating or cooling).

¹⁷ This requirement shall be considered complied with where aid is awarded to only one beneficiary/project in the context of a competitive bidding process.

4.1.1. *Investment aid to accelerate the rollout of renewable energy*

38. Investment aid to accelerate the rollout of renewable energy, including investment aid for energy storage, shall be granted with respect to newly installed or repowered capacities¹⁸. The aid amount shall be independent from the energy output. In case of repowered capacities, only the additional costs in relation to the repowered capacity are eligible for aid.
39. The eligible costs shall be the total investment costs.
40. Aid may be granted through a competitive bidding process or administratively on the basis of data on the eligible costs of each supported project provided that it does not exceed 45 % of said costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.
41. As an exception to point 40(40), where aid is granted to mature technologies (i.e. solar photovoltaic, onshore and offshore wind, and hydropower installations), it shall always be allocated via a competitive bidding process, with the exception of small projects when the aid granted per undertaking per project does not exceed EUR 30 million. Small projects that are defined as:
- (a) projects with installed capacity equal or below 1 MW; or
 - (b) demonstration projects with an installed capacity equal or below 6 MW; or
 - (c) projects with an installed capacity equal or below 6 MW, if they are 100 % owned by SMEs or renewable energy communities; or
 - (d) for wind generation only, projects with an installed capacity equal or below 18 MW, if they are 100 % owned by small and microenterprises or by renewable energy communities.
42. Aid under this section may only be cumulated with aid under section 4.1.2 of this Communication if the notified aid scheme foresees that possibility at the time of its initial notification.

4.1.2. *Direct price support schemes*

43. Direct price support schemes for the production of renewable energy shall comply with the criteria in section 3 and this section.
44. For electricity generation from renewable energy, aid shall take the form of two-way contracts for difference¹⁹ and shall be granted only to newly installed or repowered

¹⁸ Repowering means renewing power plants that produce renewable energy, including the full or partial replacement of installations or operation systems and equipment for the purposes of replacing capacity or increasing the efficiency or capacity of the installation.

¹⁹ A two-way contract for difference means a contract between a power-generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration. The contract must be designed to preserve incentives for the generating facility to operate and participate efficiently in the energy markets.

capacities²⁰. The contract duration shall not exceed 25 years following the aided installation starts operations²¹.

45. The eligible cost shall be the expected net cost estimated taking into account all main costs and revenues incurred over the lifetime of the project and any aid already received, discounted by the weighted average cost of capital (WACC).
46. Aid can be granted through a competitive bidding process. Alternatively, Member States can grant aid administratively. In this case, the NRA shall set the strike price of the two-way contracts for difference to cover the eligible cost as defined in point 45(45).
47. Where aid is granted to solar photovoltaic, onshore and offshore wind, and hydropower installations, it shall be granted only in a competitive bidding process, with the exception of small projects (as defined in point 41(41)) when the aid granted per undertaking per project does not exceed EUR 30 million.
48. Aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative²².

4.2. Aid for non-fossil flexibility support schemes

49. The Commission will consider aid for the promotion of non-fossil electricity flexibility, as defined in Article 19g and 19h of the Electricity Regulation, as compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty under this Communication²³ provided the conditions described in section 3 and in this section 4.2 are met. The measure shall be compliant with Articles 19g and 19h of the Electricity Regulation.
50. The measure shall be open to non-fossil technologies capable of providing the flexibility services and at least to energy storage of electricity and demand response. The scheme must not include any artificial limitation or discrimination, (including in the award of licences, permits or concessions when they are required). The measure can include additional technical requirements which can de facto restrict eligibility to certain may limit the eligible technologies or solutions on the basis of identified system needs.

²⁰ As defined in footnote 17.

²¹ The support payments under the contract must be limited to 25 years but Member States are free to require installations to continue making paybacks under the contracts for as long as the supported facility continues operating.

²² Small-scale renewable electricity installations and demonstration projects may benefit from direct price support that covers the full costs of operation and does not require them to sell their electricity on the market, in line with the exemption in Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale if their capacity is below the applicable threshold in Article 5 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), (OJ L 158, 14.6.2019, p. 54) (“Electricity Regulation”). Demonstration projects are projects which demonstrate a technology as a first of its kind in the Union and represent a significant innovation that goes well beyond the state of the art.

²³ This is without prejudice of the assessment of other flexibility measures under CEEAG.

51. Aid under this section shall be granted on the basis of a scheme with an estimated capacity volume and budget.
52. Member States must commit to ensure, within 2 years of the approval of the measure, that:
- (a) demand response and storage, independently of the voltage level to which the assets are connected, have the possibility to:
 - (i) sell and buy electricity in the day-ahead and intra-day markets;
 - (ii) participate in any frequency and non-frequency ancillary service where demand response and/or storage could provide the required service;
 - (iii) participate in market-based redispatching and/or be eligible to provide congestion management services for TSOs and/or DSOs;
 - (b) aggregators, including independent aggregators, can participate in the markets and services listed in (a).
53. Member States must confirm that any mitigation measures identified in the flexibility needs assessment, following Article 19e(2)c of the Electricity Regulation will be implemented within 2 years after their publication.
54. If a capacity mechanism is implemented, the design of this capacity mechanism should be open to promotes the participation of non-fossil flexibility such as demand response and storage to this capacity mechanism²⁴.
55. The volume of flexibility to procure should be set according to the European methodology and guiding criteria defined in Article 19e of the Electricity Regulation in view to cost-efficiently achieve security and reliability of supply and decarbonise the electricity system. Pending such methodology and guidance it should not exceed the provisional flexibility objective described in Article 19f of the Electricity Regulation. In this case the NRA must confirm that this flexibility volume to procure²⁵:
- (a) reflects the flexibility needs assessed under the assumption that the market improvements detailed above in points 52(52) and 53(53) have been implemented; and
 - (b) reflects the cost-effective level of flexibility after considering alternatives such as additional renewable generation, grid development and an efficient level of renewables curtailment.

²⁴ In duly justified cases, the Commission may allow for a limited transition period up to 2 years, during which market-wide capacity mechanisms and non-fossil flexibility measure may co-exist, for the integration of urgent measures for flexibility into a capacity mechanism, provided they remain proportionate and do not lead to overcompensation.

²⁵ This volume of flexibility can be based either on indicative national objective for non-fossil flexibility as defined in Article 19f of the Electricity Regulation or on provisional indicative national objectives until Article 19f of the Electricity Regulation allows it.

56. The technical conditions (such as pre-qualification requirements, availability or delivery obligations on participants), as well as the unit of flexibility service used to rank offers, should be consistent with the needs identified to meet the national objective.
57. The aid is granted in the form of contracts covering a period no longer than 10 years providing a direct grant in exchange for the flexibility service. This grant can be paid upfront or in instalments over time.
58. The aid amount is determined through a competitive bidding process.
59. The contract should include availability checks and dissuasive penalties in case of non-availability or early termination of the contract. The NRA must confirm that the availability requirements and penalties in the availability contract will not distort the functioning of the electricity markets (beneficiaries shall be incentivised to efficiently participate to electricity markets and be exposed to price variation and market risks over the lifetime of the asset).
60. The Member State confirms that it has considered the opening of the scheme to cross-border participation of those resources that are capable of providing the required technical performance, where a cost-benefit analysis is positive.
61. In order to provide efficient incentives to adjust consumption to price signals, consumers that contribute to creating this flexibility need should participate to the costs of the measure, on the basis of their consumption in periods giving rise to the need for the flexible resources. If locational technical criteria are applied, the additional costs of applying these criteria should be allocated to electricity consumers in the relevant locations. The Commission considers that such contribution can be considered proportionate when it is at least equal to 90% of the costs of the measure.

4.3. Aid for capacity mechanisms following a target model

62. The Commission will consider aid for capacity mechanisms as compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty provided the following conditions as well as the conditions in section 3 are met:
 - (a) The measure complies with all requirements for either a strategic reserve or market wide target model capacity mechanism provided in Annex I.
 - (b) The measure is approved for a period of no longer than [10] years.

5. AID TO DEPLOY INDUSTRIAL DECARBONISATION

63. The Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, aid for investments leading to a reduction of greenhouse gas emissions from industrial activities or to a substantial reduction of energy consumption in industrial activities and processes through the improvement of energy efficiency, provided that the conditions in section 3 and this section are met.

Scope

64. For the purpose of this section, industrial activities are activities that involve the production of tangible final or intermediate goods at scale.

65. This section does not apply to:

- (a) State aid granted in the primary agricultural production sector;
- (b) State aid for the production of energy without prejudice to point 70(70);
- (c) State aid that incentivises new investments in industrial production, including investments referred to in point 70(70), based on the most polluting fossil fuels, such as coal, diesel, lignite, oil, peat and oil shale.

66. Investments reducing greenhouse gas emissions or improving the energy efficiency of industrial activities that make use of any technological solution can be eligible, provided they deliver a reduction in direct greenhouse gas emissions resulting from the activity concerned, or a reduction in the energy consumption of the beneficiary's activity of at least [20]% compared to the situation without the aid²⁶.

67. Investments reducing greenhouse gas emissions of industrial activities through carbon capture equipment²⁷ with a view to CO₂ storage or usage fall within the scope of this section to the extent that the carbon capture equipment is installed either at existing plants, or at new plants that solely emit solely biogenic CO₂.

68. Investments aiming at the decarbonisation of industrial heat shall prioritise direct electrification, combined with demand flexibility solutions, and renewable heat, in particular below 400°C. In duly justified cases, also the use of hydrogen or biomass may be accepted. Natural gas may be used for investments aiming at the decarbonisation of industrial heat only if duly justified and in any event provided it delivers energy savings of at least [30]% or GHG emission savings of at least [60]%.

69. This section also covers aid for investments in an energy infrastructure²⁸ that forms an integral part of an investment under point 66(66) and that (i) is located on the project's site and dimensioned to the needs of that investment, or (ii) is developed solely to connect the beneficiary to an open infrastructure that is subject to third-party access in line with internal energy market legislation.

70. This section covers aid for investments in the production of energy, provided that:

- (a) it is part of an investment under point 66(66);
- (b) the energy is produced from renewable sources²⁹ including biomass, except for the generation of heat and high efficiency cogeneration of heat and power for which also natural gas can be used under the conditions set out in point 68(68); and

²⁶ The level of energy savings must be calculated on the basis of the final energy consumption of the equipment(s) falling within the perimeter of the investment.

²⁷ Connecting infrastructure (to a network) can be covered provided it complies with point 69(69). Transport, storage and utilisation equipment are not covered under this section. Transport, storage and utilisation equipment are not covered under this section.

²⁸ This refers to infrastructure of the types listed in point 19(36) of the CEEAG.

²⁹ As referred to in point 31(31)(a).

- (c) either (i) the energy produced is used for at least [80]% in the beneficiary's own industrial activities at the project's site³⁰, or (ii) in case of investments in high efficiency cogeneration, the heat produced is fully used by the beneficiary.

71. Aid under this section shall be granted on the basis of a scheme with an estimated budget. Member States must provide an estimate of the total direct greenhouse gas emissions to be saved, or of the total energy savings to be achieved through the scheme. Aid can be granted under this section in the form of direct grants, repayable advances, loans, guarantees or tax advantages³¹.

72. Schemes assessed under this section should in principle cover all sectors and technologies that can contribute to the objective set out in point 65(65). Member States that wish to limit the scheme's eligibility to certain sectors or technologies, must (i) justify such limited eligibility based on objective considerations, (ii) demonstrate why the limited eligibility of the scheme contributes to meeting EU and national climate targets and (iii) demonstrate that the limited scope does not exclude technological solutions that are more efficient than the technologies eligible under the scheme.

73. Limiting the eligibility of a scheme is presumed to be justified for the purposes of point 72(72) above if the scheme covers all industrial sectors covered by the EU Emissions Trading System (ETS).

74. To ensure that projects are implemented timely and deliver the expected greenhouse gas emission savings, Member States must ensure that:

- (a) the installation or equipment to be financed by the aid is in operation within [36] months after the date of granting; and
- (b) the project delivers direct greenhouse gas emission reductions or energy savings corresponding to at least [80%] of the projected reductions or savings.

The scheme should include an effective system of penalties in case this deadline or applicable threshold are not met.

- (1) For aid schemes covering investments relying wholly or partly on the use of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, Member States must impose conditions requiring that those fuels are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.
- (2) For aid schemes covering investments relying wholly or partly on the use of hydrogen, Member States must impose conditions ensuring that projects:
 - (a) only use hydrogen which is produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous

³⁰ This assessment must be based on credible *ex ante* simulations as regards the energy production and expected demand from the project.

³¹ Other forms of aid, namely of direct carbon abatement support such as aid in the form of (Carbon) Contracts for Difference and feed-in premia, as well as tradable certificates are excluded under this section. Aid in those forms or other forms of direct carbon abatement support can be notified and assessed under the CEEAG.

transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts ('renewable hydrogen'); or

- (b) use either renewable hydrogen or hydrogen which qualifies as low-carbon hydrogen as defined in Article 2(11) of Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen³² and its implementing or delegated acts. In that case, the scheme must provide that projects commit to use a share of renewable hydrogen equal to at least the average share of electricity from renewable sources in the Member State concerned as measured two years before the year in question plus 25 percentage points, or 90%, whichever is lower.
- (3) For aid schemes covering investments³³ to deploy carbon capturing equipment, Member States must ensure that projects covering investments in carbon capturing equipment:
- (a) are integrated in a complete carbon capture and storage or utilisation ('CCS' or 'CCU') chain; and
 - (b) result in the avoidance of direct greenhouse gas emissions taking into account the entire CCS or CCU chain.
- (4) Compliance with point (3)(77) is presumed if the scheme provides that only projects are eligible that:
- (a) concern the installation of carbon capturing equipment to the extent that the captured CO₂ is (i) utilised in such a way that it has become permanently chemically bound in a product so that it does not enter the atmosphere under normal use, including any normal activity taking place after the end of the life of the product, or (ii) used for the production of synthetic fuels in accordance with applicable EU law; or
 - (b) concern the installation of carbon capturing equipment with a view to its permanent storage.

5.1. Necessity

75. The Commission will presume that aid granted under the scheme is necessary if any of the following conditions is met.

- (a) The scheme requires that beneficiaries submit a funding gap calculation to the Member State concerned as part of the aid application, and only projects displaying the existence of a funding gap are eligible for aid under the scheme.
- (b) For decarbonisation investments in sectors subject to the ETS³⁴, the scheme requires that:

³² Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (recast) (OJ L, 2024/1788, 15.7.2024).

³³ See footnote 26.

- (i) the investment reduces the installation's greenhouse gas emissions by at least [10]% when, before the investment, such emissions are at the level or below the relevant benchmarks for free allocation set out in Commission Implementing Regulation (EU) 2021/447³⁵ ('ETS benchmark'); or
 - (ii) the investment reduces the installation's greenhouse gas emissions by at least [40]% and brings them below the relevant ETS benchmarks, when they were above that benchmarks before the investment was made; or
 - (iii) the investment ensures that the installation's greenhouse gas emissions are at least [10]% below the relevant ETS benchmark, if the investment concerns a new installation.
- (c) The scheme requires that the greenhouse gas emission reduction amounts to at least [40]% compared to the situation before the investment³⁶, if it concerns a decarbonisation investments in installations in sectors that are not subject to the ETS.
 - (d) The scheme requires that the greenhouse gas emission reduction in a technical unit³⁷ amounts to at least [100]% compared to the situation before the investment where the decarbonisation investment only concerns that specific technical unit.

76. The necessity of the aid is also presumed for investments in energy efficiency that are eligible for aid under this section (see point 66(66)).

77. For measures not covered by the presumptions above, Member States may exceptionally justify why a certain measure is necessary by demonstrating what actions beneficiaries would pursue in absence of the aid ('counterfactual scenario').³⁸ Account must be taken of regulatory measures already in place to achieve greenhouse gas emission reductions or energy savings.

³⁴ For the purpose of this point, the installation's greenhouse gas emissions must be measured at the level of the ETS relevant industrial product benchmark sub-installation, as defined in Article 2(2) of Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8.).

³⁵ Commission Implementing Regulation (EU) 2021/447 of 12 March 2021 determining revised benchmark values for free allocation of emission allowances for the period from 2021 to 2025 pursuant to Article 10a(2) of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 87, 15.3.2021, p. 29).

³⁶ To ensure the comparability of projects, the Member State must develop a common methodology for calculating greenhouse gas emission savings for activities not covered by the ETS.

³⁷ Within the meaning of Section 4.4 the Commission Guidance on the Interpretation of Annex I to ETS Directive, published on 18.03.2010, available at: https://climate.ec.europa.eu/system/files/2016-11/guidance_interpretation_en.pdf. For non ETS sectors, the concept can be applied by analogy.

³⁸ Member States may for instance submit quantitative evidence for representative categories of investments eligible under the scheme showing that those investments are not profitable and would not be carried out without the aid. Such quantitative evidence could take the form of funding gap calculations for reference projects, or data from studies or recent support measures. Member States may also justify the necessity and incentive effect of the aid when the scheme targets innovative technologies or solutions involving a higher degree of technological or financial risk.

5.2. Proportionality

78. When putting in place an aid scheme under this section, the Member State must select one of the alternative methodologies described in points 80(84) to 85(89).

79. The Member State must ensure that the aid is allocated through a clear, transparent and non-discriminatory procedure on the basis of objective criteria³⁹.

5.2.1. Aid intensity

80. The maximum aid amount under an aid scheme may be determined on the basis of the eligible costs of an investment, i.e. the total investment costs directly related to the achievement of the greenhouse gas emission savings or energy efficiency, and an aid intensity not higher than:

- (a) [50]% for investments in equipment or machinery using hydrogen⁴⁰;
- (b) [30]% for investments in carbon capture equipment;
- (c) [35]% for investments in equipment for the production of renewable energy, or for energy storage;
- (d) [20]% for all other technologies.

Where an investment falls under more than one of the categories listed in letters (a) to (d), the lowest applicable aid intensity applies.

81. [For investments made by small enterprises, the aid intensities under point (80) may be further increased by 10 percentage points and for investments made by medium-sized enterprises, the aid intensities may be increased by 5 percentage points.]

5.2.2. Funding gap / individual notification

82. As an alternative to point 80(84), Member States may also choose to determine the maximum aid amount under an aid scheme as the funding gap of the eligible investment. Applicants under the scheme must be required to use the uniform template for calculating the funding gap. Member States need to set up the methodology they will follow to verify that cash flow projections underpinning NPV calculations are credible and coherent with the decarbonisation project.

83. Where Member States determine the aid amount based on point 82(86), an effective claw-back mechanism must be put in place.

84. Where aid amounts based on aid intensity or funding gap methodology exceed the highest of EUR [200] million per undertaking per project or [10%] of the scheme budget, the proportionality must be assessed by the Commission following a separate notification of the project's funding gap. An effective claw-back mechanism must be put in place.

³⁹ This is without prejudice to the more specific requirements applicable to aid granted on the basis of a competitive bidding process.

⁴⁰ When the conversion to hydrogen use entails the conversion of other production processes at the same location, the aid intensity of [50%] also applies to those additional investments.

5.2.3. Competitive bidding

85. Member States may also choose to determine the maximum aid amount under an aid scheme by a competitive bidding process that complies with the following additional conditions:

- (a) The bidding process must be open to all eligible projects under the scheme that are delivering the same type of environmental contribution to the environmental objectives of the measure, i.e. its contribution to greenhouse gas emissions avoidance or its contribution to energy efficiency improvements; and
- (b) Potential bid caps to limit the maximum bid from individual bidders in particular categories must be justified with reference to funding gap calculations for reference projects.

5.3. Avoidance of undue negative effects on competition and trade

86. Projects must deliver overall greenhouse gas emissions reductions, and not merely result in the displacement of greenhouse gas emissions from one sector to another.

87. Indirect greenhouse gas emissions from the *hydrogen* used in decarbonisation projects that comply with the conditions set out in point (2)(76) are deemed to be negligible and therefore do not need to be taken into account to verify that the projects deliver overall greenhouse gas emission reductions.

88. Indirect emissions from the *electricity* used in decarbonisation projects receiving aid under the scheme are deemed to be negligible and therefore do not need to be taken into account to verify that the projects deliver overall greenhouse gas emission reductions, if the scheme provides for any of the following conditions:

- (a) Projects can only be located in bidding zones where in the previous calendar year either the average proportion of renewable electricity exceeded 90 %, or the emission intensity of electricity was lower than 18 gCO₂eq/MJ; or
- (b) The expected increase in electricity demand stemming from the scheme can be entirely covered by an increase in supply of renewable or low-carbon electricity, as projected in the most recent National Energy and Climate Plan ('NECP')⁴¹ of the Member State concerned.

(5) In all other cases, Member States must demonstrate that indirect greenhouse gas emissions linked to the eligible projects do not offset direct greenhouse gas emission reductions achieved through the investment⁴².

⁴¹ As introduced by Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

⁴² Member States can demonstrate that this is the case based on the scheme's design (e.g. where the scheme requires that additional electricity demand is covered by a directly connected renewable electricity installation) or on simulations of greenhouse gas emissions calculations per reference project.

89. Member States must ensure that aid for decarbonisation does not displace investments into cleaner alternatives that are already available on the market, or locks in certain technologies, hampering the wider development of a market for and the use of cleaner solutions. Therefore, schemes that incentivise new investments for decarbonisation in industrial production based on natural gas as means to reduce emissions are only covered by this section, if the Member State demonstrates that such aid (i) does not create lock-in effects for fossil fuels; and (ii) does not displace cleaner alternatives that are available.
90. The conditions set out in point 89(94) are deemed satisfied if the scheme provides for the following cumulative conditions:
- (a) The natural gas-consuming equipment must be capable of being operated using exclusively hydrogen or other renewable or low-carbon gases, without substantial additional investments or the need to replace the equipment; and
 - (b) beneficiaries must commit to gradually phase out natural gas, and entirely substitute it with hydrogen complying with the requirements in point (2)(76) or other renewable or low-carbon gases by the end of the project's lifetime; the scheme provides for an effective system of penalties in case of non-compliance with this commitment, which the Member States commits to monitor.
91. Schemes allowing aid for the installation of carbon capturing equipment with a view to its storage or utilisation are considered to comply with the condition in point 88(92) if the scheme provides that those projects are only eligible where the equipment complements other decarbonisation solutions to cater for residual greenhouse gas emissions from sectors that are technically unable to achieve full decarbonisation.
92. The Member States must demonstrate that the aid does not finance an increase of the overall production capacity of the beneficiary. This is without prejudice to limited capacity increases resulting from technical necessity not exceeding [5%] compared to the situation before the aid.

6. AID TO ENSURE SUFFICIENT MANUFACTURING CAPACITY IN CLEAN TECHNOLOGIES

93. Provided that the conditions in section 3 and in this section are met, the Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, aid granted to incentivise investment projects that create additional manufacturing capacity for:
- (a) the production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels energy equipment, wind turbines, heat-pumps and equipment for the production and distribution of decarbonised heat, electrolysers, and equipment for carbon capture usage and storage (CCUS); or
 - (b) the production of key components designed and primarily used as direct input for the production of the equipment defined under (a); or
 - (c) the production or recovery of related critical raw materials necessary for the production of the equipment or key components defined under (a) and (b).

6.1. Investment aid schemes

94. Aid for investment projects within the scope of point 93(98) can be granted on the basis of a scheme with an estimated budget provided that the conditions laid down in this section 6.1 and in section 3 are met.
95. Beneficiaries must apply for aid before the start of works and must provide the required information in Annex II of this Communication to the Member State.

6.1.1. Proportionality

96. The eligible costs relate to all investment costs in tangible (such as land, buildings, plant, equipment, machinery) and intangible assets (such as patent rights, licences, know-how or other intellectual property) required for the production or recovery of the goods listed in point 93(98). Intangible assets must: i) remain associated with the area concerned and must not be transferred to other areas; ii) be used primarily in the relevant production facility receiving the aid; iii) be amortisable; iv) be purchased under market conditions from third parties unrelated to the buyer; v) be included in the assets of the undertaking that receives the aid; and vi) remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs).
97. Where the project takes place in a non-assisted area, the aid intensity may not exceed 15 % of the eligible costs and the overall aid amount may not exceed EUR 75 million per project; where the investment project takes place in a 'c' area, the aid intensity may not exceed 20 % of the eligible costs and the overall aid amount may not exceed EUR 100 million per project; where the investment project takes place in an 'a' area, the aid intensity may not exceed 35 % of the eligible costs and the overall aid amount may not exceed EUR 175 million per project.⁴³
98. For investments made by small enterprises, the aid intensities may be further increased by 20 percentage points and for investments made by medium-sized enterprises, the aid intensities made by increased by 10 percentage points.
99. For aid granted in the form⁴⁴ of loans or guarantees, Member States can use the following safe harbours instead of calculating the gross grant equivalents:

	Maximum safe harbour loan amounts	SME bonus
Loan	<p>Non-assisted area: up to 30% of eligible costs (capped at EUR 150 million nominal loan amount)</p> <p>'c' area: up to 40% of eligible costs (capped at EUR 200 million nominal loan amount)</p> <p>'a' area: up to 70% of eligible costs (capped at EUR 350 million nominal loan amount)</p>	<p>Loan amount based on eligible costs can be increased by 20 percentage points for investments made by small enterprises, and by 10 percentage points for investments made by medium-sized enterprises,</p>
Guarantee	<p>Non-assisted area: up to 45% of eligible costs (capped at EUR 225</p>	

⁴³ Member States have to ensure that these maximum aid amounts are not circumvented by artificially splitting up the aided projects.

⁴⁴ The safe harbours provided in the table are only available for aid that is granted exclusively for a loan or a guarantee. Where the beneficiary falls outside the scope of a small or medium sized undertaking, the safe harbours provided only apply to enterprises with at least a B (or equivalent) rating.

	million nominal amount of underlying loan) ‘c’ area: up to 60% of eligible costs (capped at EUR 300 million nominal amount of underlying loan) ‘a’ area: up to 75% of eligible costs (capped at EUR 525 million nominal amount of underlying loan))	up to the maximum amount of 75% of eligible costs for loans and 75% of eligible costs for guarantees (in relation to the underlying loan).
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6.1.2. Safeguards to be included in schemes

100. To ensure that the investment is viable, the Member State must ensure that the aid beneficiary provides a financial contribution of at least 25 % of the eligible costs, through its own resources or by external financing, in a form that is free of any public support⁴⁵.
101. The beneficiary must commit to maintain the investment in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment 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, no further aid may be awarded to replace that plant or equipment.
102. Before granting the aid and on the basis of the information provided by the beneficiary in Annex II of this Communication, the granting authority must verify the concrete risks of the investment not taking place within the EEA and that there is no risk of relocation within the EEA in the sense of point 103(108).
103. The aid may not be provided to facilitate relocation of production activities within the EEA. For this purpose, the beneficiary has to:
- (a) confirm that in the two years preceding the application for aid, it has not carried out a relocation to the establishment in which the aided investment is to take place; and
 - (b) commit not to carry out such relocation up to a period of two years after completion of the investment.

6.2. Ad hoc matching aid

104. In addition, the Commission may approve individually notified aid for projects within the scope defined in point 93(98) and provided the conditions laid down in this section 6.2 and in section 3 are met.
105. The aid may not exceed the lower of (i) the amount of subsidy⁴⁶ that the beneficiary could demonstrably receive for an equivalent investment in a third country jurisdiction

⁴⁵ 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.

⁴⁶ The notified aid and the subsidy which the beneficiary could demonstrably receive in a third country jurisdiction outside EEA will be compared in discounted terms.

outside the EEA; and (ii) the minimum amount needed to incentivise the aid beneficiary to realise the investment in the area concerned in the EEA rather than in an alternative non-EEA jurisdiction (funding gap).⁴⁷ The Commission considers that an additional safeguard in form of a claw-back mechanism to ensure a fair distribution of additional gains that were not forecasted in the notified funding gap analysis is required in markets with an increased risk of future market volatility.

106. The aid measure shall comply with the eligibility criteria of points 95(100), 96(101) and 101(106).

107. Where the investment takes place in an area that is not part of an assisted area, the Member State should demonstrate that the investment could not be implemented as efficiently in an assisted area and that it is therefore reasonable for the aid beneficiary not to consider (or having disregarded) such assisted areas.

108. Where several locations in the EEA are under consideration for the investment, the State aid under this point may not be granted to attract the investment to an area with a regional aid intensity as specified in the applicable regional aid map that is lower than in alternative EEA areas under consideration, since this would constitute a negative effect on competition and cohesion that is unlikely to be compensated by any positive effect. In cases where the alternative EEA locations are of the same regional aid intensity, State aid under this point may not be granted if the beneficiary cannot demonstrate that the location was chosen based on objective criteria irrespective of State aid. By derogation, State aid may be granted if the beneficiary can demonstrate that the investment would not otherwise happen in such alternative EEA areas and instead be diverted to a third country or not be sufficiently profitable for the aid beneficiary anywhere in the EEA.

109. The beneficiary must commit to use for the production of goods defined in point 93(98) of this Communication the latest commercially available state-of-the-art production technology from an environmental emissions perspective.

110. The Member State should demonstrate that with the additional manufacturing capacity created by the aided investment, the aid beneficiary will contribute to strengthen European autonomy by addressing an existing gap between demand and supply within the Union and not crowd out existing or committed to be built production capacity within the Union.

111. When evaluating the notifiable measures, the Commission 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 that 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.

⁴⁷ In principle, it is unlikely that the Commission will consider compatible with Article 107(3), point (c), of the Treaty aid amounts exceeding the capital investment costs necessary to locate the projects in the area concerned considering that such aid is unlikely to have an incentive effect.

6.3. Aid to support demand of clean tech equipment in form of accelerated depreciation

112. The Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, aid schemes in the form of accelerated depreciation granted to incentivise acquisition of clean technology, if such measures constitute aid, under the following conditions:

- (a) The aid is granted in the form of aid schemes that consist in accelerated depreciation, up to full and immediate expensing⁴⁸, of costs incurred for the acquisition of eligible assets;
- (b) Eligible assets are [all relevant equipment for the transition towards a net-zero economy as defined in points 93(98)(a) of this Communication];
- (c) The eligible assets must:
 - (i) be used primarily for the activities of the benefitting company and remain associated with these activities for at least five years (or three years for SMEs); and
 - (ii) be depreciable; and
 - (iii) be purchased under market conditions from third parties unrelated to the buyer; and
 - (iv) be included in the assets of the company that receives the support;
- (d) The costs eligible for accelerated depreciation must be incurred and the accelerated depreciation must start no later than the date of expiry of this Communication as defined in point 126(131).
- (e) Cumulation rules provided in section 3.1.3 and the gross grant equivalent provision in recital 22(22) do not apply to aid under this section. [Aid in the form of accelerated depreciation can be provided as a top-up to any other State aid, or support from centrally managed funds, in relation to the same eligible costs, without the need to calculate its gross grant equivalent.]

7. AID TO DE-RISK PRIVATE INVESTMENTS IN RENEWABLE ENERGY, INDUSTRIAL DECARBONISATION, CLEAN TECH MANUFACTURING AND ENERGY INFRASTRUCTURE

113. In addition to the measures described in sections 4 to 6 above, Member States may choose to incentivise private investors to invest in projects in the areas of renewable energy, industrial decarbonisation, clean technologies manufacturing [and energy infrastructure within the framework of a legal monopoly⁴⁹.]

114. The Commission will consider compatible with the internal market on the basis of Article 107(3), point (c), of the Treaty, aid for de-risking private investments, provided that the compatibility conditions in this section 7 and in section 3 are met.

⁴⁸ Immediate expensing is not allowed for assets depreciable over a period of more than 15 years.

⁴⁹ As set out in points 373 to 375 CEEAG.

115. Aid shall be granted on the basis of a scheme to private investors for a portfolio of eligible projects within the scope of this section.
116. The aid shall take the form of equity, loans (including subordinated loans) and guarantees. It shall aim to achieve risk and/or return incentives for private investors, such as loans or guarantees with a first loss (counter) guarantee or equity investments with asymmetric reflows to different share classes. The duration of a guarantee must not exceed [eight] years in total, regardless of the underlying instrument. In case of guarantees on debt, it must not exceed the maturity of the underlying debt instrument.
117. At the level of the final beneficiaries, the investment may take the form of equity, loans (including subordinated loans) and guarantees and its maximum amount per individual project shall not exceed EUR [100 million]. Aid under this section can be cumulated with aid under the other sections of this Communication for the same project.
118. As regards limiting aid to the private investors to the minimum necessary, the Commission considers that aid to private investors is passed on to the final beneficiaries to the largest extent possible in the following cases:
- (a) for (subordinated) loans and guarantees to a portfolio of projects, when the aid to the investor is in the form of a first-loss protection of not more than [5%] and the risk taken by the State is reflected in a premium which is less than [25]% lower than the respective market-conform remuneration. It must be calibrated considering the investment grade of the final beneficiaries, the types of instruments covered, and the duration of the protection granted;
 - (b) for equity investments to a portfolio of projects, when the aid to the investor has a first hurdle rate that is not higher than [1.25 times] [the expected return] on the portfolio investment and a share class benefitting from early reflow priority that is less than 50% of the portfolio volume. Reflows above the hurdle are entirely channelled to the share class owned by the granting authority.
119. Alternatively, the Commission considers that aid to private investors is deemed as minimised when they are selected for investments in a portfolio through an open, transparent and non-discriminatory process which sets out clearly the policy objectives to be pursued by the investment.
120. Member States shall set out an investment strategy for the investment portfolio with an appropriate risk diversification policy aimed at achieving economic viability and providing long term investment opportunities for investors. A clear and realistic exit strategy shall exist for each equity and quasi-equity investment.
121. Member States may implement the de-risking scheme via a financial intermediary. The remuneration of the intermediary shall conform to market practices. This requirement is presumed to be met as long as they are selected through an open, transparent and non-discriminatory selection procedure. They shall share part of the investment risks by either co-investing their own resources or receiving a remuneration linked to performance, so as to ensure that their interests are permanently aligned with the interests of the Member State.

8. TRANSPARENCY, MONITORING AND REPORTING

122. Member States must publish relevant information on each individual aid above EUR 100 000⁵⁰ granted under this Communication[, and above EUR 10 000⁵¹ in the primary agriculture and in the fisheries sectors,] on the comprehensive State aid website or Commission's IT tool⁵² within 6 months from the moment of granting.

123. Member States must submit annual reports to the Commission⁵³.

124. Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.

125. The Commission may request additional information regarding the aid granted, in particular, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.

9. FINAL PROVISIONS

126. The Commission applies this Communication from [XXX] to all measures notified as of, as well as to measures notified prior to, that date, including under the TCTF. The Communication shall be in force until 31 December 2030.

127. This Communication replaces the TCTF adopted on 9 March 2023⁵⁴.

⁵⁰ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III to Commission Regulation (EU) No 702/2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

⁵¹ Referring to information required in Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

⁵² The State aid transparency public search gives access to State aid individual award data provided by Member States in compliance with the European transparency requirements for State aid and can be found at <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

⁵³ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.4.2004, p. 1.

⁵⁴ Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 101 17.3.2023, p. 3, as amended.

ANNEX I - TARGET MODELS FOR CAPACITY MECHANISMS

To allow for the Commission's swift assessment and approval of Member States' notifications of capacity mechanisms under Union law, this annex lists the requirements that ensure conformity for both i) a strategic reserve and ii) a market-wide capacity mechanism with State aid rules and energy sectoral legislation. For simplicity and representativity, the market-wide capacity mechanism design proposed corresponds to a central buyer capacity mechanism. Requirements linked to the market-wide capacity mechanism model are identified with "MW" while the requirements linked to the strategic reserve model are identified with "SR".

In case some of these requirements are not respected, approval would be necessary under the Guidelines on State aid for Climate, Environmental Protection and Energy (CEEAG), Section 4.8. Elements of the design meeting the requirements listed below could anyway be considered compatible under CEEAG, but further discussions would be needed to check the compatibility of aspects where Member States do not comply with these requirements.

Req.	Scope	Description		
Necessity of aid and compatibility with Electricity Regulation Arts 20(1), 21(1), 21(4), 22(1.c), and 23				
1	SR, MW	a) the latest available ERAA central reference scenarios approved by ACER must be the sole basis for identifying the need for a capacity mechanism. The reliability standard, calculated as the ratio of CONE/VOLL ¹ , must not be met in the Member State concerned at least as of the first delivery window within the approval period); and b) all parameters calculated to assess availability, such as any de-rating factors, must be in line with the ERAA assumptions and results ² .	<input type="checkbox"/>	<input type="checkbox"/>
Market failure and appropriateness of aid and compatibility with Electricity Regulation ER Art 20(3-8) and 21(3)				
2	SR, MW	Member State must have received a positive opinion from the European Commission after they submitted their market reform plan. If recommendations were made in the Commission opinion, the Member State must either have published an updated market reform plan for implementing all recommendations or commit to publishing such a plan within 3 months of the State aid decision.	<input type="checkbox"/>	<input type="checkbox"/>
3	MW	Member State must confirm they have assessed whether a strategic	<input type="checkbox"/>	<input type="checkbox"/>

¹ VOLL and CONE should be the figures provided by ACER [ref to streamlining report], once available. In the meantime, they should be calculated according to the EU methodology [link].

² The de-rating factors used should be those published by ACER/ENETSO-E [ref to streamlining report] once available. In the meantime, they must correspond to the ratio between i) availability of the given technology during scarcity situations and ii) the installed capacity of the given technology. This calculation shall be based on the latest available ERAA and should be updated at least every [2] years and be approved by the NRA.

		reserve is capable of addressing the resource adequacy concern.		
Eligibility and compatibility with Electricity Regulation Arts 22(1), 22(4) and 26				
4	SR, MW	The capacity mechanism must be open to all technologies that meet transparent, objective and non-discriminatory technical and environmental requirements. Minimum size required for participation must not be above 1 MW and must allow aggregation.		<input type="checkbox"/>
5	SR, MW	Beneficiaries must meet the Electricity Regulation CO ₂ emission limits and other applicable environmental requirements. The Member State may apply more stringent CO ₂ limits, calculated in line with ACER methodology.		<input type="checkbox"/>
6	SR, MW	The Member State confirms that de-rating factors have been set in accordance with requirement 1. The multiplication of the relevant derating factor by the installed capacity of one unit provides the default capacity value (in MW) which is eligible to participate in the capacity mechanism. Individual capacity providers are allowed to deviate from the default derating factor from the technology (up to at least [15%] of the standard derating factor of the technology). In this case, capacity providers must face the risk of penalties related to their custom derating factor.		<input type="checkbox"/>
7	MW	The capacity mechanism must be open to cross-border participation in line with ACER methodology ³ . Maximum entry capacity must be set based on the ACER rules.		<input type="checkbox"/>
Proportionality of aid and compatibility with Electricity Regulation Arts 22(1) and 22(3)				
8	SR, MW	The volume auctioned should be calculated based on ERAA central reference scenario results so that the reliability standard, determined as described in requirement 1, is reached. A demand curve should be set so that demand is reduced proportionately if prices in the competitive bidding process exceed the CONE used to calculate the reliability standard. May introduce intermediate bid caps for existing assets.		<input type="checkbox"/>
9	MW	One main auction for [75%]-[90%] ⁴ of the estimated volume required for the delivery window should take place [4]-[6] years ahead of the delivery window. Adjustment auctions may be organised closer to delivery, taking into account the lead time for developing demand response and storage.		<input type="checkbox"/>
10	SR	Auctions should take place no more than 1 year ahead of the delivery window.		
11	SR, MW	All participation rules and auction requirements must be published at least 6 weeks before the deadline for submitting bids.		<input type="checkbox"/>

³ See ACER decision: “*Technical specifications for cross-border participation in capacity mechanisms*”.

⁴ If cross border capacity is not eligible to participate in the main auctions, at least 10% of the estimated volume required for the delivery window plus the maximum entry capacity must be demanded in the adjustment auctions.

12	SR, MW	Beneficiaries must be identified through a competitive bidding process with bids ranked (and support paid) according only to their price in EUR/de-rated MW/year of available capacity.	<input type="checkbox"/>
13	MW	Beneficiaries must be allowed to sell their contract to another market player, up to at least [6 months] before the start of the delivery window.	<input type="checkbox"/>
14	SR	Capacity contracts must be 1-year.	<input type="checkbox"/>
15	MW	Default capacity contracts must cover 1 delivery window. May have contracts up to [15] years for capacity with initial CAPEX [\geq 500 000 EUR/de-rated MW]. <u>Longer contracts may be introduced. Their duration shall be proportionate to the initial CAPEX of the capacity to be contracted.</u> In Member States where the three largest companies control at least 75% of domestic installed de-rated generation, contracts of at least [10] years must be available for projects exceeding the CAPEX threshold. Long-term contracts must be available.	<input type="checkbox"/>
16	SR,MW	The delivery window must be a single fixed period of up to one year [between 1st November of year Y until October 31st of year Y+1.]	<input type="checkbox"/>
17	SR, MW	All beneficiaries must be activated (delivery or test) at least once per delivery window with \leq [24hrs] notice.	<input type="checkbox"/>
18	SR, MW	Beneficiaries must face non-availability penalties whenever unavailable in a delivery period ⁵ or test. The non-availability payment must be the same for all technologies. A beneficiary less than [50 %] available in the delivery periods within a delivery window must be exposed to a penalty payment of at least its capacity revenues for the delivery window. Beneficiaries must not face penalties related to a lack of availability outside the delivery periods. Beneficiaries must pay unavailability penalties for the remaining life of a capacity agreement if they exit that capacity agreement early ⁶ .	<input type="checkbox"/>
19	MW	Beneficiaries must be able to sell ancillary services outside the delivery period and for any capacity not subject to a contract within the capacity mechanism ⁷ .	<input type="checkbox"/>
20	MW	If Member State applies both a capacity mechanism and a flexibility measure, or already has a flexibility measure in place, capacity should be jointly procured.	<input type="checkbox"/>
21	SR	The profit of units participating in a strategic reserve must be the same,	<input type="checkbox"/>

⁵ Delivery period is a period where contracted resources are required to be available, or face penalties.

⁶ Unless they are able to transfer their agreement to another capacity provider in the secondary market. For long term contracts, unavailability penalties can be limited to 4 years. Collateral may be required from capacity providers.

⁷ The approach regarding the participation of contracted capacity to these services during the delivery period should be in line with the methodology of the adequacy assessment used to demonstrate the necessity and proportionality of the measure. Capacity providers should be deemed available for the capacity mechanism and all other ancillary services simultaneously.

		whether or not they are activated/dispatched.		
22	SR, MW	Aid may be cumulated so long as overcompensation is avoided. If the Member State allows aid under the capacity mechanism to be cumulated with aid under other measures, the publicly available capacity mechanism rules must clearly set out the method used to comply with this requirement.		<input type="checkbox"/>
Avoidance of undue distortions to competition and trade and compatibility with Electricity Regulation Art 22(1-2)				
23	SR	The capacity mechanism must meet the requirements in Electricity Regulation Art 22(2). This also defines the delivery period.		<input type="checkbox"/>
24	SR	Availability is calculated as being equal to the power delivered ⁸ .		<input type="checkbox"/>
25	MW	Availability is calculated as the sum of i) the power delivered; and ii) the availability proposed on the short-term electricity markets and which did not result in an activation ^{9 10} .		<input type="checkbox"/>
26	SR	At least 90% of any capacity mechanism costs not recovered through imbalance charges allocated in accordance with Electricity Regulation Art 22(2) must be allocated to consumers based on their consumption during the [1] – [5]% highest price periods each year.		<input type="checkbox"/>
27	MW	At least 90% of the capacity mechanism costs must be allocated to consumers based on their consumption during the [1] – [5]% highest price periods each year.		<input type="checkbox"/>

⁸ For demand response: power not consumed.

⁹ When the availability is checked, the capacity is not necessarily activated as capacity activation must be driven by energy market price signals. The only exception to that is testing requirements for capacity which the market never activates.

¹⁰ Member States must avoid any double counting when the same capacity is available for several market timeframes (e.g. day-ahead, intraday and balancing).

ANNEX II

Information to be included in the application form for aid under section 6 of this Communication

1. Information about the aid beneficiary:

- Name, registered address of main seat, main sector of activity (NACE code).
- Declaration that the firm is not in difficulty, as defined under the rescue and restructuring guidelines.
- For aid granted under a scheme under point 6.1: non-relocation declaration and commitments listed in point 103(108)

2. Information about the investment to be supported:

- Short description of the investment.
- Short description of expected positive effects for the area concerned (for example, number of jobs created or safeguarded, R&D&I activities, training, creation of a cluster and project's possible contribution to the green and digital transition of the regional economy).
- Applicable legal basis (national, EU or both).
- Planned start of works and completion of the investment.
- Location(s) of the investment.

3. Information about the financing of the investment:

- Investment costs and other associated costs.
- Total eligible costs.
- Aid amount needed to carry out the investment in the area concerned.
- Aid intensity.
- For measures assessed under section 6.2: A funding gap analysis, including the business plan and Net Present Value calculations for the factual and counterfactual scenarios, with estimated investment costs, operating costs, revenues and terminal value in both scenarios (in excel format), with supporting evidence.

4. Information on the need for aid and its expected impact:

- Short explanation of the need for aid and its impact on the investment decision or location decision. This must include an explanation of the alternative investment or location decision if aid is not granted.
- For aid under section 6.2, the beneficiary must provide:
 - o solid evidence of subsidies it would credibly receive in a non-EEA jurisdiction for a similar project included in the counterfactual scenario

- evidence that without the aid the planned investment would not take place in the EEA.
- evidence that the aid does not create counter-cohesion effects in the sense of points 107(112) and 108(113).

MEMORANDUM