

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

of XXX

declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (GBER II)

THE EUROPEAN COMMISSION,

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

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

[Having published a draft of this Regulation,]

[After consulting the Advisory Committee on State Aid,]

Whereas:

[...]

[...]

- (1) In accordance with Article 107(2)(b) of the Treaty, aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market. For the purposes of this Regulation, earthquakes, landslides, floods and avalanches should be considered events of natural disaster. The Commission should verify, in particular, that aid granted to make good the damage caused by natural disasters is indeed covered by the exception. To this end, this Regulation should lay down conditions following established practice the fulfilment of which will ensure that aid measures to make good the damage caused by natural disasters can benefit from block exemption. Those conditions should relate, in particular, to the formal recognition by the Member States' authorities of the character of the event as a natural disaster, to a direct causal link between the damage caused by the natural disaster and the damages suffered by the beneficiary undertaking and should ensure that overcompensation is avoided.
- (2) Aid has a social character for air and maritime passenger transport if it addresses the problem of steady connectivity for residents of remote regions by reducing certain transport ticket costs for them. This maybe the case for the outermost regions, Malta, Cyprus, other islands which are part of the territory of a Member State and sparsely populated areas. Where a remote region is linked to the European Economic Area by several transport routes, including indirect routes, aid should be possible for all those routes and for transport by all carriers operating on these routes. Aid should be granted without discrimination as to the identity of the carrier or type of service, which may include in particular regular, charter and low-cost services.
- (3) Broadband connectivity is of strategic importance for the achievement of the Europe 2020 objective of smart, sustainable and inclusive growth and innovation and for

social and territorial cohesion¹. Investment aid for broadband infrastructure aims at fostering the deployment of such infrastructure and related civil engineering works in areas where no comparable infrastructure exists nor is likely to be deployed by market operators in the near future. In light of the Commission's experience, such investment aid does not give rise to undue distortions of trade and competition, provided that the conditions set out in this Regulation are met. Such conditions should aim, in particular, at limiting distortions of competition by subjecting aid to technology-neutral competitive selection and by ensuring wholesale access to the subsidised networks. *[OPTION: Where future costs and revenue developments are subject to a high degree of uncertainty and there is a strong asymmetry of information, Member States should also adopt financing models that include ex post elements (e.g. using claw-backs to allow a balanced sharing of unanticipated gains). To avoid a disproportionately high burden on small, local projects, a minimum threshold may be justified for the claw-back mechanism.]*

- (4) Aid for innovation clusters aims at tackling market failures linked with coordination problems hampering the development of clusters, or limiting the interactions and knowledge flows within clusters. State aid can contribute in two ways to solve this problem: first by supporting investment in open and shared infrastructures for innovation clusters, and secondly by supporting operation of clusters, so that collaboration, networking and learning is enhanced. Operating aid for innovation clusters can however be granted only on a temporary basis for a limited period. The ratio of the total amount of aid granted to the total eligible costs over this period should not exceed 50 per cent.
- (5) Process and organisational innovation may suffer from market failures in the form of imperfect information and positive externalities, which need to be addressed by specific measures. Aid for this type of innovation is mainly relevant for SMEs, as they face constraints that may hamper their capability to improve their production or delivery methods or to significantly enhance their business practices, workplace organisation and external relations. In order to stimulate large enterprises to collaborate with SMEs in process and organisational innovation activities, aid measures which support the costs of large enterprises for such activities should also benefit from the block exemption.
- (6) In the culture and heritage conservation sector, a number of measures taken by Member States may not constitute aid because they do not fulfil all the criteria of Article 107(1) of the Treaty, for example because the activity is not economic or because trade between Member States is not affected. To the extent that such measures are covered by Article 107(1) of the Treaty, cultural institutions and projects do not typically give rise to any significant distortion of competition, and case practice has shown that such aid has limited effects on trade. Article 167 of the Treaty recognises the importance of promoting culture for the Union and its Member States and provides that the Union should take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures. Because of the dual nature of culture, being on the one hand an economic good that offers important opportunities for the creation of wealth and employment, and, on the other, a vehicle of identities, values and meanings that mirror

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2010) 245 final A Digital Agenda for Europe.

and shape our societies, the rules on State aid control should acknowledge the specificities of culture and the economic activities related to it.

- (7) *[Due to the strong competition in the film sector, script-writing, development, production, distribution and promotion of audio-visual works should be assessed under special rules. Since the Cinema Communication is under revision, the Commission's case experience on audio-visual works is based on compatibility conditions that are no longer valid and therefore cannot be exempt from the notification requirement at this stage. However, once the new Cinema Communication is adopted, aid to audio-visual works should be block-exempted.]* In general, press and magazines (written or electronic) should not be supported through aid to culture because of proximity to the market and higher potential for competition distortions. In order to clarify the scope of application of this Regulation in the area of culture, a list of cultural projects and activities that may be covered should be established and eligible costs should be specified. Both investment and operating aid up to an established threshold can be exempted from the notification requirement, provided that overcompensation is excluded.
- (8) Investment aid measures for sport infrastructures should be block exempted if they fulfil the conditions of this Regulation, to the extent they constitute State aid. In the sport sector a number of measures taken by Member States may not constitute State aid because the beneficiary does not carry out an economic activity or because there is no effect on trade between Member States. This could be, under certain circumstances, the case for aid measures which have a purely local character or which are taken in the field of amateur sport. Article 165 of the Treaty recognises the importance of promoting European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function. Aid to infrastructures which serve more than one purpose of recreation and are thus multifunctional should also be block exempted. However, aid to multifunctional tourism infrastructures such as leisure parks and hotel facilities should only be exempted if it is part of regional aid schemes aimed at tourism activities in assisted regions which have a particular positive effect on regional development. The compatibility conditions regarding both types of aid should relate, in particular, to ensuring open and non-discriminatory access to the infrastructures and fair process of assignment of concessions to a third party to construct, upgrade and/or operate the infrastructure. The exclusion of overcompensation should be ensured,

HAS ADOPTED THIS REGULATION:

...

Article 1

Aid to make good the damage caused by certain natural disasters

1. Aid to make good the damage caused by earthquakes, avalanches, landslides and floods brought about by waters overflowing river banks or lakeshores shall be compatible with the internal market within the meaning of Article 107(2)(b) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall be granted subject to the following conditions:
 - (a) the competent public authorities of a Member State have formally recognised the character of the event as a natural disaster and have submitted to the Commission information on the occurrence of such natural disaster within [fifteen] days from the start of measures; and
 - (b) there is a direct causal link between the damage caused by the natural disaster and the damages suffered by the undertaking.
3. Aid schemes related to a specific natural disaster shall be introduced within three years following the occurrence of the event. Aid on the basis of such schemes shall be granted within four years following the occurrence.
4. The eligible costs shall be compensation for material damage incurred as a direct consequence of the natural disaster, as assessed by an independent expert. This damage may include damage to assets (e.g. buildings, equipment, machinery, stocks) and for loss of income due to the full or partial suspension of activity for a maximum period of three months. The calculation of the material damage shall be based on the repair cost or economic value before disaster of the affected asset (e.g. book value). Loss of income shall be calculated on the basis of financial data of the company (earnings before interest and taxes (EBIT), depreciation and labour costs) for a previous comparable period. The damage shall be calculated at the level of the individual beneficiary.
5. The compensation shall not exceed what is needed to bring the beneficiary to the situation as from before the disaster. The aid and any other payments received, including payments under insurance policies, for the damage receiving aid shall not exceed 100% of eligible costs.

Article 2

Social aid for transport for residents of remote regions

1. Aid for air and maritime passenger transport shall be compatible with the internal market pursuant to Article 107(2)(a) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled. The publication obligations laid down in Article 10 (1) shall apply exclusively to aid schemes and not to individual aid awards.
2. The entire aid shall be for the benefit of final consumers who have their normal residence in remote regions.
3. The aid shall be granted for passenger transport on a route linking an airport or port in a remote region with another airport or port within the European Economic Area.
4. The aid shall be granted without discrimination as to the identity of the carrier or type of service and without limitation as to the precise route to or from the remote region.
5. The eligible costs shall be the price of a return ticket from or to the remote region, including all taxes and charges invoiced by the carrier to the consumer. The eligible costs shall be limited to the cost of the most economical available journey for the mode of transport chosen.
6. The aid intensity shall not exceed 50% of the eligible costs.

Definitions: 'Remote regions' means outermost regions, Malta, Cyprus, islands which are part of the territory of a Member State and sparsely populated areas.

'Outermost regions' means regions as defined under Article 349 of the Treaty. In accordance with European Council Decision (2010/718/EU) of 29 October 2010 amending the status with regard to the European Union of the island of Saint-Barthélemy (OJ L 325, 9.12.2010, p. 4), from 1 January 2012, Saint-Barthélemy ceased to be an outermost region. In accordance with European Council Decision (2012/419/EU) of 11 July 2012 amending the status of Mayotte with regard to the European Union (OJ L 204, 31.7.2012, p. 131), from 1 January 2014, Mayotte shall become an outermost region.

'Sparsely populated areas' means NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 regions with less than 12.5 inhabitants per km² (based on Eurostat data on population density).

'Normal residence' means the place where a person lives for at least 185 days in each calendar year because of personal and occupational ties; in the case of a person whose occupational ties are in a different place from his personal ties and who lives in two or more Member States, his place of normal residence is regarded as the place of his personal ties provided that he returns there regularly; where a person is living in a Member State in order to carry out a task of a set duration, his place of residence is still regarded as being the place of his personal ties, irrespective of whether he returns there during the course of this activity; attendance at a university or school in another Member State does not constitute a transfer of normal residence.

Article 3

Aid for broadband infrastructures

1. Investment aid for broadband network development shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be:
 - (a) investment costs for the deployment of a passive broadband infrastructure; or
 - (b) investment costs of broadband-related civil engineering works; or
 - (c) investment costs for the deployment of basic broadband networks ; or
 - (d) investment costs for the deployment of very high-speed next generation access ('NGA') networks.
3. The investment shall be located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within three years from the decision to grant the aid, which shall also be verified through an open public consultation.
4. The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process respecting the principle of technology neutrality.
5. The network operator shall offer the widest possible active and passive wholesale access under fair and non-discriminatory conditions, including effective and full unbundling in case of NGA networks. Such wholesale access shall be granted for at least 7 years and the right of access to ducts or poles shall not be limited in time. In

case of aid for the construction of ducts, the latter shall be large enough to cater for several cable networks and different network topologies.

6. The wholesale access price shall be based on the pricing principles set by the national regulatory authority and on benchmarks that prevail in other comparable, more competitive areas of the country or the Union and shall take into account the aid received by the network operator.
7. *[OPTION: Member States shall put in place a monitoring and claw-back mechanism if the aid amount of the project exceeds EUR 10 million].*

Notification threshold: EUR [70] mio of total project costs

Definitions:

'Basic broadband' 'Basic broadband networks' means networks with basic functionalities which are based on technology platforms such as asymmetric digital subscriber lines (up to ADSL2+ networks), non-enhanced cable (e.g. DOCSIS 2.0), mobile networks of third generation (UMTS) and satellite systems.

'Broadband-related civil engineering works' means the civil engineering works which are necessary for the deployment of a broadband network, such as digging up a road in order to enable the placement of (broadband) ducts.

'Ducts' means underground pipe or conduit used to house (fibre, copper or coax) cables of a broadband network.

'Full unbundling' means physical unbundling which grants access to the end-consumer access line and allows the competitor's own transmission systems to directly transmit over it.

'Passive broadband infrastructure' means broadband network without any active component. Typically comprises civil engineering infrastructure, ducts and dark fibre and street cabinets.

'Very high-speed next generation access (NGA) networks' means advanced networks which have at least the following characteristics: (a) deliver services reliably at a very high speed per subscriber through optical (or equivalent technology) backhaul sufficiently close to user premises to guarantee the actual delivery of the very high speed; (b) support a variety of advanced digital services including converged all-IP services, and (c) have substantially higher upload speeds (compared to basic broadband networks). At the current stage of market and technological development, NGA networks are: (a) fibre-based access networks (FTTx), (b) advanced upgraded cable networks and (c) certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber.

'Wholesale access' means access which enables an operator to utilise the facilities of another operator. The widest possible access to be provided over the relevant network shall include, on the basis of the current technological developments, at least the following access products. For FTTH/FTTB networks: ducts access, access to dark fibre, unbundled access to the local loop, and bitstream access. For cable networks: duct access and bit-stream access. For FTTC networks: duct access, sub-loop unbundling and bit-stream access. For passive network infrastructure: duct access, access to dark fibre and/or unbundled access to the local loop. For ADSL-based broadband networks: unbundled access to the local loop, bit-stream access. For mobile or wireless networks: bit-stream, sharing of physical masts and access to the backhaul networks; Satellite platform: bit-stream access.

Article 4
Aid for innovation clusters

1. Aid for innovation clusters shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid for innovation clusters shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation).
3. Access to the cluster's premises, facilities and activities shall be provided on open and non-discriminatory basis.
4. The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs.
5. Investment aid may be granted for the construction or upgrade of the innovation cluster.
6. The eligible costs shall be the investment costs in intangible and tangible assets.
7. The aid intensity of investment aid shall not exceed 15% of the eligible costs.

The aid intensity may be increased as follows:

- (a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
 - (b) by 10 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.
8. Operating aid may be granted for the operation of innovation clusters. It shall not exceed five years.
 9. The eligible costs shall be the personnel and administrative costs (including overhead costs) relating to:
 - (a) management and animation of the cluster to facilitate collaboration, information sharing and the provision or channelling of specialised and customised business support services;
 - (b) marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;
 - (c) management of the cluster's facilities;
 - (d) organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.
 10. The aid intensity of operating aid shall not exceed 50% of the total eligible costs during the five years period.

Notification threshold: EUR 5 million per cluster

Definition:

'innovation clusters' means structures or organised groupings of independent undertakings (such as innovative start-ups, small, medium and large undertakings, as well as research and knowledge dissemination organisations, non-for-profit organisations and other related economic actors) designed to stimulate innovative activity by promoting intensive interactions, sharing of facilities and exchange of knowledge and expertise and by contributing effectively to knowledge transfer, networking, information dissemination and collaboration among the undertakings and other organisations in the cluster.

Article 5

Aid for process or organisational innovation

1. Aid for process or organisational innovation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid shall be granted to large enterprises only if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs.
3. The eligible costs shall be the following:
 - (a) personnel costs;
 - (b) costs of instruments, equipment, buildings and land to the extent and for the period used for the innovation project;
 - (c) cost of contractual research, knowledge and patents bought or licensed from outside sources at arm's length;
 - (d) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project.
4. The aid intensity shall not exceed 15% of the eligible costs for large enterprises and 50% of the eligible costs for SMEs.

Notification threshold: EUR 5 million per project, per undertaking.

Definition:

'organisational innovation' means the implementation of a new organisational method in the undertaking's business practices, workplace organisation or external relations, excluding changes in business practices, workplace organisation or external relations that are based on organisational methods already in use in the undertaking, changes in management strategy, mergers and acquisitions, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, regular seasonal and other cyclical changes and trading of new or significantly improved products.

Article 6

Aid for culture and heritage conservation

1. Aid for culture and heritage conservation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from

the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. [Script-writing, development, production, distribution and promotion of audio-visual works shall not be eligible for aid under this Article.] Film studio infrastructures and press shall not be eligible for aid under this Regulation.
3. The aid shall be granted for the following cultural projects and activities:
 - (a) museums, art galleries, archives, libraries, cultural spaces, theatres, opera houses, concert halls, cinematheques and other similar cultural infrastructures and institutions;
 - (b) tangible heritage including all forms of cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage of villages and rural landscapes only if directly linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;
 - (c) intangible heritage in all its forms, including folklorist customs and crafts;
 - (d) art events, festivals, exhibitions and similar cultural activities;
 - (e) publishing of music and literature, including translations.
4. The aid may take the form of:
 - (a) investment aid, including aid for the construction or upgrade of culture infrastructure;
 - (b) operating aid.
5. For investment aid, the eligible costs shall be the investment costs in intangible and tangible assets, including:
 - (a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, the capacity of which is used per year at least 80% for cultural purposes;
 - (b) costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
 - (c) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools and traditional materials and costs for documentation, research, digitalisation and publication;
 - (d) costs for improving the accessibility of cultural heritage to the public, including costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;
 - (e) costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project.
6. For operating aid, the eligible costs shall be the following:

- (a) the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;
 - (b) operating costs directly relating to the cultural project or activity, such as travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, depreciation of tools, software and equipment, costs for promotion and costs incurred directly as a result of the project or activity;
 - (c) costs for personnel working in the cultural institution or heritage site;
 - (d) costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.
7. The aid shall not exceed the estimated funding gap of the project and the maximum aid intensity shall not exceed 100% of the eligible costs. For publishing of music and literature including translations, the aid shall not exceed the estimated funding gap of the project and the maximum aid intensity shall not exceed 70% of the total eligible costs.

Notification threshold:

- for investment aid: aid amount of EUR [70] mio and
- for operating aid: aid amount of EUR [25] mio per year.

Definitions:

'Funding gap' means the difference between the total expected discounted costs of the aided project and its expected discounted revenues over the reference period.

Article 7

Aid for sport and multifunctional recreational infrastructures

1. Aid for the construction or upgrade of sport and multifunctional recreational infrastructures shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aided sport infrastructure shall consist of facilities intended for the exercise of sport at the level of at least 80% of capacity. The infrastructure shall not be used exclusively by a single professional sport user and the use by other professional or non-professional sport users shall be annually at the level of at least 20% of capacity.
3. The aided multifunctional recreational infrastructures shall consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities. Access to the infrastructure shall be open to several users.
4. Access to the sport or multifunctional recreational infrastructure shall be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 50% of the investment costs of the infrastructure may be granted preferential access,

provided it is limited to a duration not exceeding the depreciation of the investment and the preferential-access conditions are made publicly available.

5. For users of sport infrastructure which are professional sport clubs, Member States shall ensure that the pricing conditions for the use of the infrastructure by competing clubs are comparable on the basis of a register.
6. Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on a transparent and non-discriminatory basis, having due regard to the applicable procurement rules.
7. Eligible costs shall be investment costs in tangible and/or intangible assets and operating costs linked to the sport or multifunctional recreational infrastructure over the reference period, which is the depreciation period.
8. The aid shall not exceed the estimated funding gap of the project, and the maximum aid intensity shall not exceed [75]% of the total eligible costs.

Notification threshold: Aid amount of EUR [15] mio or total project costs of EUR [30] mio

Definitions:

'Funding gap' means the difference between the total expected discounted costs of the aided project and its expected discounted revenues over the reference period.

'Professional sport' means the inclusion of monetary compensation for participation in the exercise of sport.

[...]

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply until 31 December 2020. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President*