

## III

(Other acts)

## EUROPEAN ECONOMIC AREA

## EFTA SURVEILLANCE AUTHORITY DECISION

No 407/13/COL

of 23 October 2013

**amending, for the 90th time, the procedural and substantive rules in the field of State aid by introducing a new chapter on Regional State aid for 2014-20 and by prolonging the validity of the chapters on national regional aid for 2007-13 and the criteria for an in-depth assessment of regional aid to large investment projects**

THE EFTA SURVEILLANCE AUTHORITY ('THE AUTHORITY'),

HAVING regard to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

HAVING regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24 and Article 5(2)(b),

Whereas:

Under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

Under Article 5(2)(b) of the Surveillance and Court Agreement, the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary,

On 28 June 2013 the European Commission adopted the Guidelines on regional State aid for 2014-2020 <sup>(1)</sup>,

These guidelines are also of relevance for the European Economic Area,

Uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area in line with the objective of homogeneity established in Article 1 of the EEA Agreement,

According to point II under the heading 'GENERAL' on page 11 of Annex XV to the EEA Agreement, the Authority, after consultation with the Commission, is to adopt acts corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

HAVING consulted the EFTA States by a letter dated 2 August 2013 on the subject,

<sup>(1)</sup> OJ C 209, 23.7.2013, p. 1.

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid Guidelines shall be amended by introducing a new chapter on Regional State aid for 2014-20. The new chapter is set out in Annex I to this Decision.

*Article 2*

The existing chapters on national regional aid for 2007-13 and the criteria for an in-depth assessment of regional aid to large investment projects shall be prolonged until 30 June 2014.

*Article 3*

Only the English language version of this decision is authentic.

Done at Brussels, 23 October 2013.

*For the EFTA Surveillance Authority*

Oda Helen SLETNES

*President*

Sabine MONAUNI-TÖMÖRDY

*College member*

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## GUIDELINES ON REGIONAL STATE AID FOR 2014-20

## INTRODUCTION

- (1) On the basis of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement, the EFTA Surveillance Authority ('the Authority') may consider compatible with the internal market State aid to promote the economic development of certain disadvantaged areas within the EEA <sup>(1)</sup>. This kind of State aid is known as regional aid.
- (2) In these guidelines, the Authority sets out the conditions under which regional aid may be considered to be compatible with the internal market and establishes the criteria for identifying the areas that fulfil the conditions of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement <sup>(2)</sup>.
- (3) The primary objective of State aid control in the field of regional aid is to allow aid for regional development while ensuring a level playing field between EEA States, in particular by preventing subsidy races that may occur when they try to attract or retain businesses in disadvantaged areas of the EEA, and to limit the effects of regional aid on trade and competition to the minimum necessary.
- (4) The objective of geographical development distinguishes regional aid from other forms of aid, such as aid for research, development and innovation, employment, training, energy or for environmental protection, which pursue other objectives of common interest in accordance with Article 61(3) of the EEA Agreement. In some circumstances higher aid intensities may be allowed for those other types of aid, whenever granted to undertakings established in disadvantaged areas, in recognition of the specific difficulties which they face in such areas <sup>(3)</sup>.
- (5) Regional aid can only play an effective role if it is used sparingly and proportionately and is concentrated on the most disadvantaged regions of the EEA <sup>(4)</sup>. In particular, the permissible aid ceilings should reflect the relative seriousness of the problems affecting the development of the regions concerned. Furthermore, the advantages of the aid in terms of the development of a less-favoured region must outweigh the resulting distortions of competition <sup>(5)</sup>. The weight given to the positive effects of the aid is likely to vary according to the applied derogation of Article 61(3) of the EEA Agreement, so that a greater distortion of competition can be accepted in the case of the most disadvantaged regions covered by Article 61(3)(a) than in those covered by Article 61(3)(c) <sup>(6)</sup>.
- (6) Regional aid can further be effective in promoting the economic development of disadvantaged areas only if it is awarded to induce additional investment or economic activity in those areas. In certain very limited, well-identified cases, the obstacles that these particular areas may encounter in attracting or maintaining economic activity may be so severe or permanent that investment aid alone may not be sufficient to allow the development of that area. Only in such cases may regional investment aid be supplemented by regional operating aid not linked to an investment.
- (7) In the Communication on State aid modernisation of 8 May 2012 <sup>(7)</sup>, the European Commission announced three objectives pursued through the modernisation of State aid control:
  - (a) to foster sustainable, smart and inclusive growth in a competitive internal market;

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

<sup>(2)</sup> These Guidelines correspond to the Communication from the Commission — Guidelines on regional State aid for 2014-2020 ('the Commission Guidelines'), adopted on 28 June 2013 (OJ C 209, 23.7.2013, p. 1).

<sup>(3)</sup> Regional top-ups for aid granted for such purposes are therefore not considered as regional aid.

<sup>(4)</sup> Each EFTA State may identify these areas in a regional aid map on the basis of the conditions laid down in Section 5.

<sup>(5)</sup> See in this respect Case 730/79 *Philip Morris* [1980] ECR 2671, paragraph 17 and in Case C-169/95 *Spain v Commission* [1997] ECR I-148, paragraph 20.

<sup>(6)</sup> See in this respect Case T-380/94 *AIUFFASS and AKT v Commission* [1996] ECR II-2169, paragraph 54.

<sup>(7)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of regions EU State aid Modernisation (SAM), COM/2012/0209 final.

- (b) to focus Commission *ex ante* scrutiny on cases with the biggest impact on the internal market while strengthening the cooperation with EU Member States in State aid enforcement;
- (c) to streamline the rules and provide for faster decisions.
- (8) In particular, the Communication called for a common approach to the revision of the different guidelines and frameworks with a view to strengthening the internal market, promoting more effectiveness in public spending through a better contribution of State aid to the objectives of common interest, greater scrutiny of the incentive effect, limiting the aid to the minimum, and avoiding the potential negative effects of the aid on competition and trade. The Authority takes the same view. The compatibility conditions set out in these guidelines are based on those common assessment principles and are applicable to notified aid schemes and individual aid.

## 1. SCOPE AND DEFINITIONS

### 1.1. SCOPE OF REGIONAL AID

- (9) Regional aid to the steel <sup>(8)</sup> and synthetic fibres <sup>(9)</sup> sectors will not be considered to be compatible with the internal market.
- (10) The Authority will apply the principles set out in these guidelines to regional aid in all sectors of economic activity falling within the scope of the EEA Agreement <sup>(10)</sup>, apart from the transport sector <sup>(11)</sup>, which is subject to special rules laid down by specific legal instruments, which might derogate partially or totally from these guidelines. The Authority will apply these guidelines for processing and marketing of agricultural products into non-agricultural products.
- (11) These guidelines will not apply to State aid granted to airports <sup>(12)</sup> or in the energy sector <sup>(13)</sup>.
- (12) Regional investment aid to broadband networks may be considered compatible with the internal market if, in addition to the general conditions laid down in these guidelines, it complies also with the following specific conditions: (i) aid is granted only to areas where there is no network of the same category (either basic broadband or NGA) and where none is likely to be developed in the near future; (ii) the subsidised network operator offers active and passive wholesale access under fair and non-discriminatory conditions with the possibility of effective and full unbundling; (iii) aid should be allocated on the basis of a competitive selection process in accordance with paragraphs 74(c) and (d) of the Authority's Broadband Guidelines <sup>(14)</sup>.
- (13) Regional investment aid to research infrastructures <sup>(15)</sup> may be regarded to be compatible with the internal market if, in addition to the general conditions laid down in these guidelines, the aid is made conditional on giving transparent and non-discriminatory access to this infrastructure.
- (14) Large undertakings tend to be less affected than small and medium enterprises (SMEs) by regional handicaps for investing or maintaining economic activity in a less developed area. Firstly, large companies can more easily obtain capital and credit on global markets and are less constrained by the more limited offer of financial services in a particular disadvantaged region. Secondly, investments by large undertakings can produce economies of scale

<sup>(8)</sup> As defined in Annex II.

<sup>(9)</sup> As defined in Annex II(a).

<sup>(10)</sup> Following the expiry on 31 December 2013 of the Authority's Guidelines on State aid to shipbuilding (OJ L 31, 31.1.2013, p. 77 and EEA Supplement No 7, 31.1.2013, p. 1), regional aid to shipbuilding is also covered by these guidelines. All the Authority's guidelines are available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

<sup>(11)</sup> Transport means transport of passengers by aircraft, maritime transport, road, railway and by inland waterway or freight transport services for hire or reward.

<sup>(12)</sup> See the Authority's guidelines on aid to the aviation sector (OJ L 124, 23.5.1996, p. 41-52) referring to the Community guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid to the aviation sector (OJ C 350, 10.12.1994, p. 5) and the Authority's guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ L 62, 6.3.2008, p. 30 and EEA Supplement No 12, 6.3.2008, p. 3) as amended or replaced.

<sup>(13)</sup> The Authority will assess the compatibility of State aid to the energy sector on the basis of the future energy and environmental aid guidelines, amending the current guidelines on State aid for environmental protection, where the specific handicaps of the assisted areas will be taken into account.

<sup>(14)</sup> Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, not yet published. All the Authority's guidelines are available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

<sup>(15)</sup> As defined in Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 8.8.2009, p. 1), applied within the EEA by virtue of Protocol 31 to the EEA Agreement, pursuant to the Authority's guidelines on aid for research and development and innovation (OJ L 305, 19.11.2009, p. 1 and EEA Supplement No 60, 19.11.2009, p. 1).

that reduce location-specific initial costs and, in many respects, are not tied to the region in which the investment takes place. Thirdly, large companies making investments usually possess considerable bargaining power *vis-à-vis* the authorities, which may lead to aid being awarded without need or due justification. Finally, large companies are more likely to be significant players on the market concerned and, consequently, the investment for which the aid is awarded may distort competition and trade on the internal market.

- (15) Since regional aid to large undertakings for their investments is unlikely to have an incentive effect, it cannot be regarded to be compatible with the internal market under Article 61(3)(c) of the EEA Agreement, unless it is granted for initial investments that create new economic activities in these areas <sup>(16)</sup>, or for the diversification of existing establishments into new products or new process innovations.
- (16) Regional aid aimed at reducing the current expenses of an undertaking constitutes operating aid and will not be regarded as compatible with the internal market, unless it is awarded to tackle specific or permanent handicaps faced by undertakings in disadvantaged regions. Operating aid may be considered compatible if it aims to reduce certain specific difficulties faced by SMEs in particularly disadvantaged areas falling within the scope of Article 61(3)(a) of the EEA Agreement, or to prevent or reduce depopulation in very sparsely populated areas.
- (17) Operating aid awarded to undertakings whose principal activity falls under Section K 'Financial and insurance activities' of the NACE <sup>(17)</sup> Rev. 2 statistical classification of economic activities <sup>(18)</sup> or to undertakings that perform intra-group activities and whose principal activity falls under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2 will not be considered to be compatible with the internal market.
- (18) Regional aid may not be awarded to firms in difficulties, as defined for the purposes of these guidelines by the Authority's Guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(19)</sup>, as amended or replaced.
- (19) When assessing regional aid awarded to an undertaking which is subject to an outstanding recovery order following a previous Authority decision declaring an aid illegal and incompatible with the internal market, the Authority will take account of the amount of aid still to be recovered <sup>(20)</sup>.

## 1.2. DEFINITIONS

- (20) For the purposes of these guidelines, the following definitions apply:
- (a) "'a' areas' mean those areas designated in a regional aid map in application of the provisions of Article 61(3)(a) of the EEA Agreement; "'c' areas' mean those areas designated in a regional aid map in application of the provisions of Article 61(3)(c) of the EEA Agreement;
- (b) '*ad hoc* aid' means aid that is not awarded on the basis of a scheme;
- (c) 'adjusted aid amount' means the maximum permissible aid amount for a large investment project, calculated according to the following formula:

$$\text{maximum aid amount} = R \times (50 + 0,50 \times B + 0,34 \times C)$$

where: R is the maximum aid intensity applicable in the area concerned, excluding the increased aid intensity for SMEs. B is the part of eligible costs between EUR 50 million and EUR 100 million. C is the part of eligible costs above EUR 100 million;

<sup>(16)</sup> See paragraph (20)(i).

<sup>(17)</sup> NACE is an acronym derived from the French title 'Nomenclature générale des Activités économiques dans les Communautés Européennes' (Statistical classification of economic activities in the European Communities) used to designate the various statistical classifications of economic activities in the EU.

<sup>(18)</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

<sup>(19)</sup> OJ L 107, 28.4.2005, p. 28, as prolonged by OJ L 48, 25.2.2010, p. 27 and by the Authority's Decision 438/12/COL of 28 November 2012 amending for the eighty-sixth time the procedural and substantive rules in the field of State aid (OJ L 190, 11.7.2013, p. 91) and EEA Supplement No 40, 11.7.2013, p. 15. As explained in paragraph 19 of those Guidelines, given that its very existence is in danger, a firm in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured.

<sup>(20)</sup> See in this respect Joined Cases T-244/93 and T-486/93, *TWD Textilwerke Deggendorf GmbH v Commission* [1995] ECR II-02265.

- (d) 'date of award of the aid' means the date when the EFTA State took a legally binding commitment to award the aid that can be invoked before the national courts;
- (e) 'eligible costs' means, for the purpose of investment aid, tangible and intangible assets related to an initial investment or wage costs;
- (f) 'gross grant equivalent' (GGE) means the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs, as calculated at the time of award of the aid on the basis of the reference rate applicable on that date;
- (g) 'individual aid' means aid granted either on the basis of a scheme or on an *ad hoc* basis;
- (h) 'initial investment' means
- i. an investment in tangible and intangible assets related to:
    - the setting-up of a new establishment;
    - the extension of the capacity of an existing establishment;
    - the diversification of the output of an establishment into products not previously produced in the establishment; or
    - a fundamental change in the overall production process of an existing establishment, or
  - ii. an acquisition of assets directly linked to an establishment provided the establishment has closed or would have closed if it had not been purchased, and is bought by an investor unrelated to the seller. The sole acquisition of the shares of an undertaking does not qualify as initial investment;
- (i) 'initial investment in favour of new economic activity' means:
- i. An investment in tangible and intangible assets related to:
    - the setting up of a new establishment; or
    - the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment; or
  - ii. the acquisition of the assets belonging to an establishment that has closed or would have closed if it had not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not a same or similar activity to the activity performed in the establishment prior to the acquisition;
- (j) 'intangible assets' means assets acquired through a transfer of technology such as patent rights, licences, know-how or unpatented technical knowledge;
- (k) 'job creation' means a net increase in the number of employees in the establishment concerned compared with the average over the previous 12 months after deducting from the apparent created number of jobs any job lost during that period;
- (l) 'large investment project' means an initial investment with eligible costs exceeding EUR 50 million, calculated at prices and exchange rates on the date of award of the aid;
- (m) 'maximum aid intensities' means the aid intensities in GGE for large undertakings as laid down in Subsection 5.4 of these guidelines and reflected in the relevant regional aid map;
- (n) 'notification threshold' means aid amounts exceeding the thresholds set out in the table below:

Aid intensity	Notification threshold
10 %	EUR 7,5 million
15 %	EUR 11,25 million

Aid intensity	Notification threshold
25 %	EUR 18,75 million
35 %	EUR 26,25 million
50 %	EUR 37,5 million

- (o) 'number of employees' means the number of annual labour units (ALU), namely the numbers of persons employed full-time in one year; persons working part-time or employed in seasonal work are counted in ALU fractions;
- (p) 'operating aid' means aid aimed to reduce an undertaking's current expenditure that is not related to an initial investment. This includes costs categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when granting regional investment aid;
- (q) 'regional aid map' means the list of areas designated by an EFTA State in accordance with the conditions laid down in these guidelines and approved by the Authority;
- (r) 'the same or a similar activity' means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities;
- (s) 'single investment project' means any initial investment started by the same beneficiary (at group level) in a period of three years from the date of start of works on another aided investment in the same Statistical region <sup>(21)</sup> at level 3;
- (t) 'SMEs' means undertakings that fulfil the conditions laid down in the Authority's guidelines of 19 April 2006 on aid to micro, small and medium-sized enterprises <sup>(22)</sup>;
- (u) 'start of works' means either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment;
- (v) 'sparsely populated areas' mean those areas designated by the EFTA State concerned in accordance with the first and second sentence of paragraph (149) of these guidelines;
- (w) 'tangible assets' means assets such as land, buildings, and plant, machinery and equipment;
- (x) 'very sparsely populated areas' means Statistical regions at level 2 for Norway and level 3 for Iceland with less than 8 inhabitants per km<sup>2</sup> (based on Eurostat data on population density for 2010) or parts of such Statistical regions designated by the EFTA State concerned in accordance with the third sentence of paragraph 149 of these guidelines;
- (y) 'wage costs' means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising the gross wage before tax and compulsory contributions such as social security, child care and parent care costs over a defined period of time.

<sup>(21)</sup> In these guidelines the term 'Statistical region' will be used instead of the acronym 'NUTS' in the Commission Guidelines. NUTS is derived from the title 'Nomenclature of Territorial Units for Statistics' according to Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1). This regulation has not been incorporated into the EEA Agreement. However, in order to achieve common definitions in an ever-increasing demand for statistical information at a regional level, the Statistical Office of the European Union, Eurostat, and the National Institutes of the Candidate countries and EFTA have agreed that statistical regions be established similar to the NUTS classification.

<sup>(22)</sup> Available at <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

## 2. NOTIFIABLE REGIONAL AID

- (21) In principle, EFTA States must notify regional aid pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, with the exception of measures that fulfil the conditions laid down in a block exemption regulation incorporated in the EEA Agreement through Annex XV.
- (22) The Authority will apply these guidelines to notified regional aid schemes and individual aid.
- (23) Individual aid granted under a notified scheme remains subject to the notification obligation pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement, if the aid from all sources exceeds the notification threshold <sup>(23)</sup> or if it is granted to a beneficiary that has closed down the same or similar activity in the EEA two years preceding the date of applying for aid or at the moment of aid application has the intention to close down such an activity within a period of two years after the investment to be subsidised is completed.
- (24) Investment aid granted to a large undertaking to diversify an existing establishment in an 'c' area into new products, remains subject to the notification obligation pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

## 3. COMPATIBILITY ASSESSMENT OF REGIONAL AID

### 3.1. COMMON ASSESSMENT PRINCIPLES

- (25) To assess whether a notified aid measure can be considered compatible with the internal market, the Authority generally analyses whether the design of the aid measure ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition.
- (26) The Commission's Communication on State aid modernisation of 8 May 2012, referred to in the introductory section of these guidelines, called for the identification and definition of common principles applicable to the assessment of compatibility of all the aid measures carried out by the Commission. The same common principles apply to the compatibility assessment carried out by the Authority. For this purpose, the Authority will consider an aid measure compatible with the EEA Agreement only if it satisfies each of the following criteria:
- (a) contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 61(3) EEA Agreement (Section 3.2);
  - (b) need for state intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern (Section 3.3);
  - (c) appropriateness of the aid measure: the proposed aid measure must be an appropriate policy instrument to address the objective of common interest (Section 3.4);
  - (d) incentive effect: the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or it would carry out in a restricted or different manner or location (Section 3.5);
  - (e) proportionality of the aid (aid to the minimum): the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned (Section 3.6);
  - (f) avoidance of undue negative effects on competition and trade between EEA States: the negative effects of aid must be sufficiently limited, so that the overall balance of the measure is positive (Section 3.7);
  - (g) transparency of aid: EEA States, the Authority, economic operators, and the public, must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder (Section 3.8).

<sup>(23)</sup> See paragraph (20)(n).



- (27) The overall balance of certain categories of schemes may further be made subject to a requirement of *ex post* evaluation as described in Section 4 of these guidelines. In such cases, the Authority may limit the duration of those schemes (normally to four years or less) with a possibility to re-notify their prolongation afterwards.
- (28) If a State aid measure or the conditions attached to it (including its financing method when the financing method forms an integral part of the State aid measure) entail a non-severable violation of EEA law, the aid cannot be declared compatible with the internal market <sup>(24)</sup>.
- (29) In assessing the compatibility of any individual aid with the internal market, the Authority will take account of any proceedings concerning infringement to Articles 53 or 54 of the EEA Agreement which may concern the beneficiary of the aid and which may be relevant for its assessment under Article 61(3) of the EEA Agreement <sup>(25)</sup>.

### 3.2. CONTRIBUTION TO A COMMON OBJECTIVE

- (30) The primary objective of regional aid is to reduce the development gap between the different regions in the EEA. Through its equity or cohesion objective regional aid may contribute to the achievement of the Europe 2020 strategy delivering an inclusive and sustainable growth.

#### 3.2.1. Investment aid schemes

- (31) Regional aid schemes should form an integral part of a regional development strategy with clearly defined objectives and should be consistent with and contribute towards these objectives.
- (32) In 'c' areas schemes may be put in place to support initial investments of SMEs and initial investment in favour of new activity of large undertakings.
- (33) When awarding aid to individual investment projects on the basis of a scheme, the granting authority must confirm that the selected project will contribute towards the objective of the scheme and thus towards the development strategy of the area concerned. For this purpose, EFTA States can rely on the information provided by the applicant for aid in the form annexed to these guidelines where the positive effects of the investment on the area concerned must be described <sup>(26)</sup>.
- (34) To ensure that the investment makes a real and sustained contribution to the development of the area concerned, the investment must be maintained in the area concerned for at least five years, or three years for SMEs, after its completion <sup>(27)</sup>.
- (35) If the aid is calculated on the basis of wage costs, the posts must be filled within three years of the completion of works. Each job created through the investment must be maintained within the area concerned for a period of five years from the date the post was first filled. For investments carried out by all SMEs, EFTA States may reduce this five-year period for the maintenance of an investment or jobs to a minimum of three years.
- (36) To ensure that the investment is viable, the EFTA State must ensure that the 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 exempted of any public financial support <sup>(28)</sup>.
- (37) To avoid that State aid measures would lead to environmental harm, EFTA States must also ensure compliance with EEA environmental legislation, including in particular the need to carry out an environmental impact assessment when required by law and ensure all relevant permits.

<sup>(24)</sup> See for instance Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 78 and Case C-333/07 *Régie Networks v Rhone Alpes Bourgogne* [2008] ECR I-10807, paragraphs 94-116.

<sup>(25)</sup> See Case C-225/91 *Matra v Commission* [1993] ECR I-3203, paragraph 42.

<sup>(26)</sup> See Annex V of these guidelines.

<sup>(27)</sup> The obligation to maintain the investment in the area concerned for a minimum period of 5 years (3 years for SMEs) should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, regional aid may not be awarded to replace that plant or equipment.

<sup>(28)</sup> 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.

### 3.2.2. Notified individual investment aid

- (38) To demonstrate the regional contribution of individual investment aid notified to the Authority, EFTA States may use a variety of indicators such as the ones mentioned below that can be both direct (for example, direct jobs created) and indirect (for example, local innovation):
- (a) The number of direct jobs created by the investment is an important indicator of the contribution to regional development. The quality of the jobs created and the required skill level should also be considered.
  - (b) An even higher number of new jobs might be created in the local (sub-) supplier network, helping to better integrate the investment in the region concerned and ensuring more widespread spillover effects. The number of indirect jobs created will therefore also be taken into account.
  - (c) A commitment by the beneficiary to enter into widespread training activities to improve the skills (general and specific) of its workforce will be considered as a factor that contributes to regional development. Emphasis will also be put on providing traineeships or apprenticeships, especially for young people and on training that improves the knowledge and employability of workers outside the undertaking. General or specific training for which training aid is approved will not be counted as a positive effect of the regional aid to avoid double counting.
  - (d) External economies of scale or other benefits from a regional development viewpoint may arise as a result of proximity (clustering effect). Clustering of undertakings in the same industry allows individual plants to specialise more, which leads to increased efficiency. However, the importance of this indicator in determining the contribution to regional development depends on the state of development of the cluster.
  - (e) Investments embody technical knowledge and can be the source of a significant transfer of technology (knowledge spillovers). Investments taking place in technology intensive industries are more likely to involve technology transfer to the recipient region. The level and the specificity of the knowledge dissemination are also important in this regard.
  - (f) The projects' contribution to the region's ability to create new technology through local innovation can also be considered. Cooperation of the new production facility with local higher education institutions can be considered positively in this respect.
  - (g) The duration of the investment and possible future follow-on investments are an indication of a durable engagement of a company in the region concerned.
- (39) EFTA States can also refer to the business plan of the aid beneficiary which could provide information on the number of jobs to be created, salaries to be paid (increase in household wealth as spill-over effect), volume of acquisition from local producers, turnover generated by the investment and benefiting the area possibly through additional tax revenues.
- (40) For *ad hoc* aid <sup>(29)</sup>, the EFTA State must demonstrate, in addition to the requirements laid down in paragraphs (33) to (37), that the project is coherent with and contributes towards the development strategy of the area concerned.

### 3.2.3. Operating aid schemes

- (41) Operating aid schemes will promote the development of disadvantaged areas only if the challenges facing these areas are clearly identified in advance. The obstacles to attracting or maintaining economic activity may be so severe or permanent that investment aid alone is not sufficient to allow the development of those areas.
- (42) As regards aid to reduce certain specific difficulties faced by SMEs in 'a' areas, the EFTA States concerned must demonstrate the existence and importance of those specific difficulties and must demonstrate that an operating aid scheme is needed as those specific difficulties cannot be overcome with investment aid.

<sup>(29)</sup> *Ad hoc* aid is subject to the same requirements as individual aid granted on the basis of a scheme, unless otherwise mentioned.

- (43) As regards operating aid to prevent or reduce depopulation in very sparsely populated areas, the EFTA State concerned must demonstrate the risk of depopulation of the relevant area in the absence of the operating aid.

### 3.3. NEED FOR STATE INTERVENTION

- (44) In order to assess whether State aid is necessary to achieve the objective of common interest, it is necessary first to diagnose the problem to be addressed. State aid should be targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself. This holds especially in a context of scarce public resources.
- (45) State aid measures can indeed, under certain conditions, correct market failures thereby contributing to the efficient functioning of markets and enhancing competitiveness. Furthermore, where markets provide efficient outcomes but these are deemed unsatisfactory from an equity or cohesion point of view, State aid may be used to obtain a more desirable, equitable market outcome.
- (46) As regards aid granted for the development of areas included in the regional aid map in accordance with the rules developed in Section 5 of these guidelines, the Authority considers that the market is not delivering the expected cohesion objectives set out in the EEA Agreement without state intervention. Therefore, aid granted in those areas should be considered compatible with the internal market pursuant to Article 61(3)(a) and (c) of the EEA Agreement.

### 3.4. APPROPRIATENESS OF REGIONAL AID

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

#### 3.4.1. Appropriateness among alternative policy instruments

##### 3.4.1.1. Investment aid schemes

- (48) Regional investment aid is not the only policy instrument available to EFTA States to support investment and job creation in disadvantaged regions. EFTA States can use other measures such as infrastructure development, enhancing the quality of education and training, or improvements in the business environment.
- (49) EFTA States must indicate why regional aid is an appropriate instrument to tackle the common objective of equity or cohesion when introducing a scheme outside an operational programme financed from the cohesion policy funds.
- (50) The Authority will in particular take account of any impact assessments of the proposed aid scheme that the EFTA State may make available. Likewise, the results of *ex post* evaluations as described in Section 4 may be taken into account to assess the appropriateness of the proposed scheme.

##### 3.4.1.2. Individual investment aid

- (51) For *ad hoc* aid, the EFTA State must demonstrate how the development of the area concerned is better ensured by such aid than by aid under a scheme or other types of measures.

##### 3.4.1.3. Operating aid schemes

- (52) The EFTA State must demonstrate that the aid is appropriate to achieve the objective of the scheme for the problems that the aid is intended to address. To demonstrate that the aid is appropriate, the EFTA State may calculate the aid amount *ex ante* as a fixed sum covering the expected additional costs over a given period, to incentivise undertakings to contain costs and develop their business in a more efficient manner over time <sup>(30)</sup>.

<sup>(30)</sup> However, where future costs and revenue developments are surrounded by a high degree of uncertainty and there is a strong asymmetry of information, the public authority may also wish to adopt compensation models that are not entirely *ex ante*, but rather a mix of *ex ante* and *ex post* (for example, using claw backs such as to allow sharing of unanticipated gains).

### 3.4.2. Appropriateness among different aid instruments

- (53) Regional aid can be awarded in various forms. The EFTA State should however ensure that the aid is awarded in the form that is likely to generate the least distortions of trade and competition. In this respect, if the aid is awarded in forms that provide a direct pecuniary advantage (for example, direct grants, exemptions or reductions in taxes, social security or other compulsory charges, or the supply of land, goods or services at favourable prices, etc.), the EFTA State must demonstrate why other potentially less distortive forms of aid such as repayable advances or forms of aid that are based on debt or equity instruments (for example, low-interest loans or interest rebates, state guarantees, the purchase of a share-holding or an alternative provision of capital on favourable terms) are not appropriate.
- (54) For aid schemes implementing the objectives and priorities of operational programmes, the financing instrument chosen in this programme is considered to be an appropriate instrument.
- (55) The results of *ex post* evaluations as described in Section 4 may be taken into account to assess the appropriateness of the proposed aid instrument.

### 3.5. INCENTIVE EFFECT

- (56) Regional aid can only be found compatible with the internal market, if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.
- (57) The existence of an incentive effect can be proven in two possible scenarios:
- (a) The aid gives an incentive to adopt a positive investment decision because an investment that would otherwise not be sufficiently profitable for the beneficiary can take place in the area concerned <sup>(31)</sup> (*scenario 1*, investment decision) or
- (b) The aid gives an incentive to opt to locate a planned investment in the relevant area rather than elsewhere because it compensates for the net disadvantages and costs linked to a location in the area concerned (*scenario 2*, location decision).
- (58) If the aid does not change the behaviour of the beneficiary by stimulating (additional) investment in the area concerned, it can be considered that the same investment would take place in the region even without the aid. Such aid lacks incentive effect to achieve the regional objective and cannot be approved as compatible with the internal market.
- (59) However, for regional aid awarded through cohesion policy funds in 'a' regions to investments necessary to achieve standards set by EEA law, the aid may be considered to have an incentive effect, if in absence of the aid, it would not have been sufficiently profitable for the beneficiary to make the investment in the area concerned, thereby leading to the closure of an existing establishment in that area.

#### 3.5.1. Investment aid schemes

- (60) Works on an individual investment can start only after submitting the application form for aid.
- (61) If works begin before submitting the application form for aid, any aid awarded in respect of that individual investment will not be considered compatible with the internal market.
- (62) EFTA States must introduce a standard application form for aid, which is annexed to these guidelines <sup>(32)</sup>. In the application form, SMEs and large companies must explain counterfactually what would have happened had they not received the aid indicating which of the scenarios described in paragraph (57) applies.

<sup>(31)</sup> Such investments may create conditions allowing further investments that are viable without additional aid.

<sup>(32)</sup> See Annex III.

- (63) In addition, large companies must submit documentary evidence in support of the counterfactual described in the application form. SMEs are not subject to such obligation.
- (64) The granting authority must carry out a credibility check of the counterfactual and confirm that regional aid has the required incentive effect corresponding to one of the scenarios described in paragraph (57). A counterfactual is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment.

### 3.5.2. Notified individual investment aid

- (65) In addition to the requirements of paragraphs (60) to (64), for notified individual aid <sup>(33)</sup>, the EFTA State must provide clear evidence that the aid effectively has an impact on the investment choice or the location choice <sup>(34)</sup>. It must specify which scenario described in paragraph (57) applies. To allow a comprehensive assessment, the EFTA State must provide not only information concerning the aided project but also a comprehensive description of the counterfactual scenario, in which no aid is awarded to the beneficiary by any public authority in the EEA.
- (66) In *scenario 1*, the EFTA State could prove the existence of the incentive effect of the aid by providing company documents that show that the investment would not be sufficiently profitable without the aid.
- (67) In *scenario 2*, the EFTA State could prove the incentive effect of the aid by providing company documents showing that a comparison has been made between the costs and benefits of locating in the area concerned and those in alternative area(s). The Authority verifies whether such comparisons have a realistic basis.
- (68) The EFTA States are, in particular, invited to rely on official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents that are submitted to an investment committee and that elaborate on various investment scenarios, or documents provided to the financial institutions could help the EFTA States to demonstrate the incentive effect.
- (69) In this context, and in particular in *scenario 1*, the level of profitability can be evaluated by reference to methodologies which are standard practice in the particular industry concerned, and which may include methods to evaluate the net present value of the project (NPV) <sup>(35)</sup>, the internal rate of return (IRR) <sup>(36)</sup> or the average return on capital employed (ROCE). The profitability of the project is to be compared with normal rates of return applied by the company in other investment projects of a similar kind. Where these rates are not available, the profitability of the project is to be compared with the cost of capital of the company as a whole or with the rates of return commonly observed in the industry concerned.
- (70) If the aid does not change the behaviour of the beneficiary by stimulating (additional) investment in the area concerned, there is no positive effect for the region. Therefore, aid will not be considered compatible with the internal market in cases where it appears that the same investment would take place in the region even without the aid having been granted.

### 3.5.3. Operating aid schemes

- (71) For operating aid schemes, the incentive effect of the aid will be considered to be present if it is likely that, in the absence of aid, the level of economic activity in the area or region concerned would be significantly reduced due to the problems that the aid is intended to address.

<sup>(33)</sup> *Ad hoc* aid must also respect the requirements laid down in paragraphs (60) to (64) of these guidelines, in addition to the requirements of Section 3.5.2.

<sup>(34)</sup> The counterfactual scenarios are described in paragraph 57.

<sup>(35)</sup> The net present value of a project is the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital).

<sup>(36)</sup> The internal rate of return is not based on accounting earnings in a given year, but takes into account the stream of future cash flows that the investor expects to receive over the entire lifetime of the investment. It is defined as the discount rate for which the NPV of a stream of cash flows equals zero.

- (72) The Authority will therefore consider that the aid induces additional economic activity in the areas or regions concerned, if the EFTA State has demonstrated the existence and substantial nature of those problems in the area concerned (see paragraphs (42) and (43)).

### 3.6. PROPORTIONALITY OF THE AID AMOUNT (AID LIMITED TO THE MINIMUM)

- (73) In principle, the amount of the regional aid must be limited to the minimum needed to induce additional investment or activity in the area concerned.
- (74) As a general rule, notified individual aid will be considered to be limited to the minimum, if the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual in the absence of aid. Likewise, in the case of investment aid granted to large undertakings under notified schemes, EFTA States must ensure that the aid amount is limited to the minimum on the basis of a 'net-extra cost approach'.
- (75) For *scenario 1* situations (investment decisions) the aid amount should therefore not exceed the minimum necessary to render the project sufficiently profitable, for example to increase its IRR beyond the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind or, when available, to increase its IRR beyond the cost of capital of the company as a whole or beyond the rates of return commonly observed in the industry concerned.
- (76) In *scenario 2* situations (location incentives), the aid amount should not exceed the difference between the net present value of the investment in the target area with the net present value in the alternative location. All relevant costs and benefits must be taken into account, including for example administrative costs, transport costs, training costs not covered by training aid and also wage differences. However, where the alternative location is in the EEA, subsidies granted in that other location are not to be taken into account.
- (77) To ensure predictability and a level playing field, the Authority further applies maximum aid intensities<sup>(37)</sup> for investment aid. These maximum aid intensities serve a dual purpose.
- (78) First, for notified schemes, these maximum aid intensities serve as safe harbours for SMEs: as long as the aid intensity remains below the maximum permissible, the criterion of 'aid limited to the minimum' is deemed to be fulfilled.
- (79) Second, for all other cases, the maximum aid intensities are used as a cap to the net-extra costs approach described in paragraphs (75) and (76).
- (80) The maximum aid intensities are modulated in function of three criteria:
- (a) the socioeconomic situation of the area concerned, as a proxy for the extent to which the area is in need of further development and, potentially, the extent to which it suffers from a handicap in attracting and maintaining economic activity;
  - (b) the size of the beneficiary as proxy for the specific difficulties to finance or implement a project in the area, and
  - (c) the size of the investment project, as indicator for the expected level of distortion of competition and trade.
- (81) Accordingly, higher aid intensities (and, potentially, higher resulting distortions of trade and competition) are allowed the less developed the target region is, and if the aid beneficiary is an SME.
- (82) In view of the expected higher distortions of competition and trade, the maximum aid intensity for large investment projects must be scaled down using the mechanism as defined in paragraph (20)(c).

<sup>(37)</sup> See Subsection 5.4 on maximum aid intensities.

### 3.6.1. Investment aid schemes

- (83) For aid to SMEs, the increased maximum aid intensities described in Section 5.4 may be used. However, SMEs may not benefit from these increased intensities where the investment relates to a large investment project.
- (84) For aid to large undertakings, the EFTA State must ensure that the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual in the absence of aid. The method explained in paragraphs (75) and (76) must be used together with maximum aid intensities as a cap.
- (85) For aid to large investment projects, it must be ensured that the aid does not exceed the scaled down intensity. Where aid is awarded to a beneficiary for an investment that is considered to be part of a single investment project, the aid must be scaled down for the eligible costs exceeding EUR 50 million <sup>(38)</sup>.
- (86) The maximum aid intensity and aid amount per project must be calculated by the granting authority when awarding the aid. The aid intensity must be calculated on the basis of a gross grant equivalent either in relation to the total eligible costs of the investment or eligible wage costs declared by the aid beneficiary when applying for aid.
- (87) If investment aid calculated on the basis of investment costs is combined with regional investment aid calculated on the basis of wage costs, the total aid must not exceed the highest aid amount resulting from either calculation up to the maximum permissible aid intensity for the area concerned.
- (88) Investment aid may be awarded concurrently under several regional aid schemes or cumulated with *ad hoc* aid, provided that the total aid from all sources does not exceed the maximum permissible aid intensity per project that must be calculated in advance by the first granting authority.
- (89) For an initial investment linked to European Territorial Cooperation (ETC) projects meeting the criteria of the Regulation laying down the specific provisions for the support of the European Regional Development Fund to the ETC cooperation goal <sup>(39)</sup>, the aid intensity which applies to the area in which the initial investment is located will apply to all beneficiaries participating in the project. If the initial investment is located in two or more assisted areas, the maximum aid intensity for the initial investment will be the one applicable in the assisted area where the largest part of the eligible costs are incurred. Initial investments carried out by large undertakings in 'c' areas may only benefit from regional aid in the context of ETC projects if they are initial investments in favour of new activities or new products.

#### 3.6.1.1. Eligible costs calculated on the basis of investment costs

- (90) The assets acquired should be new, except for SMEs or in the case of acquisition of an establishment <sup>(40)</sup>.
- (91) For SMEs, up to 50 % of the costs of preparatory studies or consultancy costs linked to the investment may also be considered as eligible costs.
- (92) For aid awarded for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years.
- (93) For aid awarded for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works.
- (94) Costs related to the lease of tangible assets may be taken into account under the following conditions:
- (a) For land and buildings, the lease must continue for at least five years after the expected date of completion of the investment for large companies, and three years for SMEs
- (b) For plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset at the expiry of the term of the lease.

<sup>(38)</sup> Scaled down aid intensities are the result of the mechanism defined in paragraph (20)(c).

<sup>(39)</sup> Regulation of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal. Commission proposal COM(2011) 611 ERDF/ETC Regulation.

<sup>(40)</sup> Defined in paragraph (20)(h) and (i).

- (95) In the case of acquisition of an establishment only the costs of buying the assets from third parties unrelated to the buyer should be taken into consideration. The transaction must take place under market conditions. Where aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets should be deducted from the eligible costs related to the acquisition of an establishment. If the acquisition of an establishment is accompanied by an additional investment eligible for aid, the eligible costs of this latter investment should be added to the costs of purchase of the assets of the establishment.
- (96) For large undertakings, costs of intangible assets are eligible only up to a limit of 50 % of the total eligible investment costs for the project. For SMEs, the full costs related to intangible assets may be taken into consideration.
- (97) Intangible assets which are eligible for the calculation of the investments costs must remain associated with the assisted area concerned and must not be transferred to other regions. To this end, the intangible assets must fulfil the following conditions:
- (a) they must be used exclusively in the establishment receiving the aid;
  - (b) they must be amortisable;
  - (c) they must be purchased under market conditions from third parties unrelated to the buyer.
- (98) The intangible assets must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is awarded for at least five years (three years for SMEs).

#### 3.6.1.2. *Eligible costs calculated on the basis of wage costs*

- (99) Regional aid may also be calculated by reference to the expected wage costs arising from job creation as a result of an initial investment. Aid can compensate only the wage costs of the person hired calculated over a period of two years and the resulting intensity cannot exceed the applicable aid intensity in the area concerned.

#### 3.6.2. **Notified individual investment aid**

- (100) For *scenario 1* situations (investment decision) the Authority will verify whether the aid amount exceeds the minimum necessary to render the project sufficiently profitable, by using the method set out in paragraph (75).
- (101) In *scenario 2* situations (location decision), for a location incentive, the Authority will compare the net present value of the investment for the target area with the net present value of the investment in the alternative location, by using the method set out in paragraph (76).
- (102) Calculations used for the analysis of the incentive effect can also be used to assess if the aid is proportionate. The EFTA State must demonstrate the proportionality on the basis of documentation such as that referred to in paragraph (68).
- (103) The aid intensity must not exceed the permissible adjusted aid intensity.

#### 3.6.3. **Operating aid schemes**

- (104) The EFTA State must demonstrate that the level of the aid is proportionate to the problems that the aid is intended to address.
- (105) In particular, the following conditions must be fulfilled:
- (a) the aid must be determined in relation to a predefined set of eligible costs that are fully attributable to the problems that the aid is intended to address, as demonstrated by the EFTA State;
  - (b) the aid must be limited to a certain proportion of those predefined set of eligible costs and must not exceed those costs;
  - (c) the aid amount per beneficiary must be proportional to the level of the problems actually experienced by each beneficiary.



### 3.7. AVOIDANCE OF UNDUE NEGATIVE EFFECTS ON COMPETITION AND TRADE

- (106) For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between EFTA States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest. Certain situations can be identified where the negative effects manifestly outweigh any positive effects, meaning that the aid cannot be found compatible with the internal market.

#### 3.7.1. General considerations

- (107) Two main potential distortions of competition and trade may be caused by regional aid. These are product market distortions and location effects. Both types may lead to allocative inefficiencies (undermining the economic performance of the internal market) and to distributional concerns (distribution of economic activity across regions).
- (108) One potentially harmful effect of State aid is that it prevents the market mechanism from delivering efficient outcomes by rewarding the most efficient producers and putting pressure on the least inefficient to improve, restructure or exit the market. A substantial capacity expansion induced by State aid in an underperforming market might in particular unduly distort competition, as the creation or maintenance of overcapacity could lead to a squeeze on profit margins, a reduction of competitors' investments or even the exit of competitors from the market. This might lead to a situation where competitors that would otherwise be able to stay on the market are forced out of the market. It may also prevent undertakings from entering or expanding in the market and it may weaken incentives for competitors to innovate. This results in inefficient market structures which are also harmful to consumers in the long run. Further, the availability of aid may induce complacent or unduly risky behaviour on the part of potential beneficiaries. The long term effect on the overall performance of the sector is likely to be negative.
- (109) Aid may also have distortive effects in terms of increasing or maintaining substantial market power on the part of the beneficiary. Even where aid does not strengthen substantial market power directly, it may do so indirectly, by discouraging the expansion of existing competitors or inducing their exit or discouraging the entry of new competitors.
- (110) Apart from distortions on the product markets, regional aid by nature also affects the location of economic activity. Where one area attracts an investment due to the aid, another area loses out on that opportunity. These negative effects in the areas adversely affected by aid may be felt through lost economic activity and lost jobs including those at the level of subcontractors. It may also be felt in a loss of positive externalities (for example, clustering effect, knowledge spillovers, education and training, etc.).
- (111) The geographical specificity of regional aid distinguishes it from other forms of horizontal aid. It is a particular characteristic of regional aid that it is intended to influence the choice made by investors about where to locate investment projects. When regional aid off-sets the additional costs stemming from the regional handicaps and supports additional investment in assisted areas without attracting it away from other assisted areas, it contributes not only to the development of the region, but also to cohesion and ultimately benefits the whole EEA. With regard to the potential negative location effects of regional aid, these are already limited to a certain degree by regional aid maps, which define exhaustively the areas where regional aid may be granted, taking account of the equity and cohesion policy objectives, and the maximum permissible aid intensities. However, an understanding of what would have happened in the absence of the aid remains important to appraise the actual impact of the aid in the cohesion objective.

#### 3.7.2. Manifest negative effects

- (112) The Authority identifies a number of situations where the negative effects of the aid manifestly outweigh any positive effects, so that the aid cannot be declared compatible with the internal market.
- (113) The Authority establishes maximum aid intensities. These constitute a basic requirement for compatibility, the aim of which is to prevent the use of State aid for projects where the ratio between aid amount and eligible costs is considered very high and particularly likely to be distortive. In general, the greater the positive effects to which the aided project is likely to give rise and the higher the likely need for aid, the higher the cap on aid intensity will be.

- (114) For *scenario 1* cases (investment decisions), where the creation of capacity by the project takes place in a market which is structurally in absolute decline, the Authority considers it to be a negative effect, which is unlikely to be compensated by any positive effect.
- (115) In *scenario 2* cases (location decisions), where without aid the investment would have been located in a region with a regional aid intensity which is higher or the same as the target region this will constitute a negative effect that is unlikely to be compensated by any positive effect because it runs counter to the very rationale of regional aid.
- (116) Where the beneficiary closes down the same or a similar activity in another area in the EEA and relocates that activity to the target area, if there is a causal link between the aid and the relocation, this will constitute a negative effect that is unlikely to be compensated by any positive elements.
- (117) When appraising notified measures, the Authority will request all necessary information to consider whether the State aid would result in a substantial loss of jobs in existing locations within the EEA.

### 3.7.3. Investment aid schemes

- (118) Investment aid schemes must not lead to significant distortions of competition and trade. In particular, even where distortions may be considered limited at an individual level (provided all conditions for investment aid are fulfilled), on a cumulative basis schemes might still lead to high levels of distortions. Such distortions might concern the output markets by creating or aggravating a situation of overcapacity or creating, increasing or maintaining the substantial market power of some recipients in a way that will negatively affect dynamic incentives. Aid available under schemes might also lead to a significant loss of economic activity in other areas of the EEA. In case of a scheme focussing on certain sectors, the risk of such distortions is even more pronounced.
- (119) Therefore, the EFTA State has to demonstrate that these negative effects will be limited to the minimum taking into account, for example, the size of the projects concerned, the individual and cumulative aid amounts, the expected beneficiaries as well as the characteristics of the targeted sectors. In order to enable the Authority to assess the likely negative effects, the EFTA State could submit any impact assessment at its disposal as well as *ex post* evaluations carried out for similar predecessor schemes.
- (120) When awarding aid under a scheme to individual projects, the granting authority must verify and confirm that the aid does not result in the manifest negative effects described in paragraph (115). This verification can be based on the information received from the beneficiary when applying for aid and on the declaration made in the standard application form for aid where the alternative location in absence of aid should be indicated.

### 3.7.4. Notified individual investment aid

- (121) In appraising the negative effects of notified aid, the Authority distinguishes between the two counterfactual scenarios described in paragraphs (100) and (101) above.

#### 3.7.4.1. Scenario 1 cases (investment decisions)

- (122) In *scenario 1* cases, the Authority places particular emphasis on the negative effects linked with the build-up of overcapacity in declining industries, the prevention of exit, and the notion of substantial market power. These negative effects are described below in paragraphs (123) to (132) and must be counterbalanced with the positive effects of the aid. However, if it is established that the aid would result in the manifest negative effects described in paragraph (114) the aid cannot be found compatible with the internal market because it is unlikely to be compensated by any positive element.
- (123) In order to identify and assess the potential distortions of competition and trade, EFTA States should provide evidence permitting the Authority to identify the product markets concerned (that is to say, products affected by the change in behaviour of the aid beneficiary) and to identify the competitors and customers/consumers affected.

- (124) The Authority will use various criteria to assess these potential distortions, such as market structure of the product concerned, performance of the market (declining or growing market), process for selection of the aid beneficiary, entry and exit barriers, product differentiation.
- (125) A systematic reliance on State aid by an undertaking might indicate that the undertaking is not able to withstand competition on its own or that it enjoys undue advantages compared to its competitors.
- (126) The Authority distinguishes two main sources of potential negative effects on product markets:
- (a) cases of significant capacity expansion which leads to or deteriorates an existing situation of overcapacity, especially in a declining market and
  - (b) cases where the aid beneficiary holds substantial market power.
- (127) In order to evaluate whether the aid may serve to create or maintain inefficient market structures, the Authority will take into account the additional production capacity created by the project and whether the market is underperforming.
- (128) Where the market in question is growing, there is normally less reason to be concerned that the aid will negatively affect dynamic incentives or will unduly impede exit or entry.
- (129) More concern is warranted when markets are in decline. In this respect the Authority distinguishes between cases for which, from a long-term perspective, the relevant market is structurally in decline (that is to say, shows a negative growth rate), and cases for which the relevant market is in relative decline (that is to say, shows a positive growth rate, but does not exceed a benchmark growth rate).
- (130) Underperformance of the market will normally be measured compared to the EEA GDP over the last three years before the start of the project (benchmark rate); it can also be established on the basis of projected growth rates in the coming three to five years. Indicators may include the foreseeable future growth of the market concerned and the resulting expected capacity utilisation rates, as well as the likely impact of the capacity increase on competitors through its effects on prices and profit margins.
- (131) In certain cases, assessing the growth of the product market in the EEA may not be appropriate to entirely assess the effects of aid, in particular if the geographic market is worldwide. In such cases, the Authority will consider the effect of the aid on the market structures concerned, in particular, its potential to crowd out producers in the EEA.
- (132) In order to evaluate the existence of substantial market power, the Authority will take into account the position of the beneficiary over a period of time before receiving the aid and the expected market position after finalizing the investment. The Authority will take account of market shares of the beneficiary, as well as of market shares of its competitors and other relevant factors, including, for example, the market structure by looking at the concentration in the market, possible barriers to entry<sup>(41)</sup>, buyer power<sup>(42)</sup> and barriers to expansion or exit.

#### 3.7.4.2. Scenario 2 cases (location decisions)

- (133) If the counterfactual analysis suggests that without the aid the investment would have gone ahead in another location (*scenario 2*) which belongs to the same geographical market considering the product concerned, and if the aid is proportional, possible outcomes in terms of overcapacity or substantial market power would in principle be the same regardless of the aid. In such cases, the positive effects of the aid are likely to outweigh the limited negative effects on competition. However, where the alternative location is in the EEA, the Authority is particularly concerned with negative effects linked with the alternative location and therefore if the aid results in the manifest negative effects described in paragraphs (115) and (116) the aid cannot be found compatible with the internal market because it is unlikely to be compensated by any positive element.

<sup>(41)</sup> These entry barriers include legal barriers (in particular intellectual property rights), economies of scale and scope, access barriers to networks and infrastructure. Where the aid concerns a market where the aid beneficiary is an incumbent, possible barriers to entry may exacerbate the potential substantial market power wielded by the aid beneficiary and thus the possible negative effects of that market power.

<sup>(42)</sup> Where there are strong buyers in the market, it is less likely that an aid beneficiary can increase prices *vis-à-vis* these strong buyers.

### 3.7.5. Operating aid schemes

- (134) If the aid is necessary and proportional to achieve the common objective described in Subsection 3.2.3, the negative effects of the aid are likely to be compensated by positive effects. However, in some cases, the aid may result in changes to the structure of the market or to the characteristics of a sector or industry which could significantly distort competition through barriers to market entry or exit, substitution effects, or displacement of trade flows. In those cases, the identified negative effects are unlikely to be compensated by any positive effects.

### 3.8. TRANSPARENCY

- (135) EFTA States must publish on a central website, or on a single website retrieving information from several websites (for example, regional websites), at least the following information on the notified State aid measures: the text of the notified aid scheme and its implementing provisions, granting authority, individual beneficiaries, aid amount per beneficiary, and aid intensity. These requirements apply to individual aid granted under notified schemes and as well as for *ad hoc* aid. Such information must be published after the granting decision has been taken, must be kept for at least 10 years and must be available for the general public without restrictions <sup>(43)</sup>.

## 4. EVALUATION

- (136) To further ensure that distortions of competition and trade are limited, the Authority may require that certain schemes be subject to a time limitation (of normally 4 years or less) and to the evaluation referred to in paragraph (27).
- (137) Evaluations will be carried out for schemes where the potential distortions are particularly high, that is to say, that may restrict competition significantly, if their implementation is not reviewed in due time.
- (138) Given the objectives of the evaluation and in order not to impose a disproportionate burden on EFTA States in respect of smaller aid amounts, this obligation may be imposed only for aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen. The evaluation must be carried out by an expert independent from the State aid granting authority on the basis of a common methodology <sup>(44)</sup> and must be made public. The evaluation must be submitted to the Authority in sufficient time to allow for the assessment of the possible prolongation of the aid scheme and in any case upon expiry of the scheme. The precise scope and the methodology of this evaluation to be carried out will be defined in the decision approving the aid scheme. Any subsequent aid measure with a similar objective must take into account the results of the evaluation.

## 5. REGIONAL AID MAPS

- (139) In this section, the Authority lays down the criteria for identifying the areas that fulfil the conditions of Articles 61(3)(a) and (c) of the EEA Agreement. The areas that fulfil these conditions and which an EFTA State wishes to designate as 'a' or 'c' areas must be identified in a regional aid map which must be notified to the Authority and approved by the Authority before regional aid can be awarded to undertakings located in the designated areas. The maps must also specify the maximum aid intensities applicable in these areas.

### 5.1. POPULATION COVERAGE ELIGIBLE FOR REGIONAL AID

- (140) Given that the award of regional State aid derogates from the general prohibition of State aid laid down in Article 61(1) of the EEA Agreement, the EFTA Surveillance Authority considers that the total population coverage of assisted regions in the EFTA States must be lower than that of the non-designated areas.
- (141) In the Authority's guidelines on national regional aid for 2007-2013 <sup>(45)</sup> the national population coverage was fixed on the basis of low population density regions according to Article 61(3)(c) of the EEA Agreement. The national population ceiling for Norway was set at 29,08 % and for Iceland it was set at 31,6 %.

<sup>(43)</sup> This information should be regularly updated (for example every six months) and should be available in non-proprietary formats.

<sup>(44)</sup> Such a common methodology may be provided by the Authority.

<sup>(45)</sup> OJ L 54, 28.2.2008, p. 1 and EEA Supplement No 11, 28.2.2008, p. 1.

- (142) The EFTA States have certain specificities that must be taken into account when determining the eligible population coverage:
- (a) due to the relatively high GDP per capita in the EFTA States, no region qualifies for the derogation under Article 61(3)(a) of the EEA Agreement <sup>(46)</sup>,
  - (b) many regions within the EFTA States are low population density regions.

Due to such specificities, the Authority will fix the national population coverage on the basis of low population density regions, as in the Guidelines on national regional aid for 2007-2013 <sup>(47)</sup>.

Norway has eight Statistical regions at level 3 with low population density making up 25,51 % of Norwegian population. Consequently, the national population coverage for Norway for 2014-20 is 25,51 %.

Iceland has two Statistical regions at level 3 in total and one of them is with low population density making up 36,5 % of Icelandic population. Consequently, the national population coverage for Iceland for 2014-20 is 36,5 %.

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

#### 5.2. THE DEROGATION IN ARTICLE 61(3)(a) OF THE EEA AGREEMENT

- (143) Article 61(3)(a) of the EEA Agreement provides that ‘aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment’ may be considered to be compatible with the internal market. According to the Court of Justice, ‘the use of the words “abnormally” and “serious” in Article [107](3)(a) [of the Treaty on the Functioning of the European Union] shows that the exemption concerns only areas where the economic situation is extremely unfavourable in relation to the [Union] as a whole’ <sup>(48)</sup>.
- (144) The Authority considers that the conditions laid down in Article 61(3)(a) of the EEA Agreement are fulfilled if the region, being a Statistical region at level 2, has a per capita gross domestic product (GDP), measured in purchasing power standards (PPS), of less than 75 % of the EEA average. The GDP per capita <sup>(49)</sup> of each region and the EEA average to be used in the analysis are determined by reference to the relevant official statistical. There is however no Statistical region at level 2 in the EFTA States that currently fulfils this condition <sup>(50)</sup>. Hence, no region in the EFTA States qualifies for the Article 61(3)(a) EEA derogation.

#### 5.3. THE DEROGATION IN ARTICLE 61(3)(c) OF THE EEA AGREEMENT

- (145) Article 61(3)(c) of the EEA Agreement provides that ‘aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’ may be considered to be compatible with the internal market. According to the Court of Justice, ‘[t]he exemption in Article [107](3)(c) [...] permits the development of certain areas without being restricted by the economic conditions laid down in Article [107](3)(a), provided such aid “does not adversely affect trading conditions to an extent contrary to the common interest”. That provision gives the Commission power to authorise aid intended to further the economic development of areas of an EU Member State which are disadvantaged in relation to the national average’ <sup>(51)</sup>. In the Authority’s view, the same applies under Article 61(3)(c) of the EEA Agreement.
- (146) The European Commission has in its corresponding Guidelines defined the methodology to be applied in order to determine the eligible national population coverage within the Member States. This method entails the following:

<sup>(46)</sup> This should be understood as meaning that no region within the EFTA States meets the 75 % per capita GDP as described in paragraph 144.

<sup>(47)</sup> Based on Eurostat data for 2010.

<sup>(48)</sup> Case 248/84 *Germany v Commission* [1987] ECR 4036, paragraph 19; Case C-169/95 *Spain v Commission* [1997] ECR I-148, paragraph 15; and Case C-310/99 *Italy v Commission* [2002] ECR I-2289, paragraph 77.

<sup>(49)</sup> In this, and all subsequent references to GDP per capita in these guidelines, GDP is measured in terms of purchasing power standards (PPS).

<sup>(50)</sup> Should this situation change, the Authority would adopt new guidelines to take into account such a modification.

<sup>(51)</sup> Case 248/84 *Germany v Commission* [1987] ECR 4036, paragraph 19.

- (147) There are two categories of 'c' areas according to the Commission Guidelines:
- (a) areas that fulfil certain pre-established conditions and that an EU Member State may therefore designate as 'c' areas without any further justification ('predefined "c" areas');
  - (b) areas that an EU Member State may, at its own discretion, designate as 'c' areas provided that the EU Member State demonstrates that such areas fulfil certain socioeconomic criteria ('non-predefined "c" areas').
- (148) Coverage for predefined 'c' areas, according to the Commission Guidelines, are allocated according to a specific allocation methodology, prescribed in Section 5.3.1 of those guidelines. This methodology entails that former 'a' areas during the period 2011-13 together with sparsely populated areas are considered as predefined 'c' areas. Since the EFTA States did not have any 'a' regions during this period, only sparsely populated areas fall under this category.

### 5.3.1. Pre-defined 'c' areas

- (149) For sparsely populated areas, an EFTA State should in principle designate Statistical regions at level 2 with less than 8 inhabitants per km<sup>2</sup> or Statistical regions level 3 with less than 12,5 inhabitants per km<sup>2</sup>. However, an EFTA State may designate parts of Statistical regions at level 3 with less than 12,5 inhabitants per km<sup>2</sup> or other contiguous areas adjacent to those Statistical regions at level 3, provided that the areas designated have less than 12,5 inhabitants per km<sup>2</sup> and that their designation does not exceed the specific allocation of 'c' coverage referred to in paragraph (142). For very sparsely populated areas, an EFTA State may designate parts of Statistical regions at level 2 for Norway and level 3 for Iceland with less than 8 inhabitants per km<sup>2</sup> or other smaller contiguous areas adjacent to those Statistical regions, provided that the areas designated have less than 8 inhabitants per km<sup>2</sup> and that their designation does not exceed the specific allocation of 'c' coverage referred to in paragraph (142).

### 5.3.2. Non-predefined 'c' areas

- (150) The Authority considers that the criteria used by EFTA States for designating 'c' areas should reflect the diversity of situations in which the award of regional aid may be justified. The criteria should therefore address certain socioeconomic, geographical or structural problems likely to be encountered in 'c' areas and should provide sufficient safeguards that the award of regional State aid will not adversely affect trading conditions to an extent contrary to the common interest.
- (151) Accordingly, an EFTA State may designate as 'c' areas the non-predefined 'c' areas defined on the basis of the following criteria:
- (a) Criterion 1: contiguous areas of at least 100 000 inhabitants <sup>(52)</sup> located in Statistical regions at level 2 or level 3 that have:
    - a GDP per capita below or equal to the EU-27 average, or;
    - an unemployment rate above or equal to 115 % of the national average <sup>(53)</sup>.
  - (b) Criterion 2: Statistical regions at level 3 of less than 100 000 inhabitants that have:
    - a GDP per capita below or equal to the EU-27 average, or;
    - an unemployment rate above or equal to 115 % of the national average.

<sup>(52)</sup> This population threshold will be reduced to 50 000 inhabitants for EFTA States that have a non-predefined 'c' coverage of less than 1 million inhabitants or to 10 000 inhabitants for EFTA States whose national population is below 1 million inhabitants.

<sup>(53)</sup> For unemployment, calculations should be based on regional data published by the national statistical office, using the average of the last three years for which such data are available (at the moment of the notification of the regional aid map). Except as otherwise indicated in these guidelines, the unemployment rate in relation to the national average is calculated on this basis.

- (c) Criterion 3: islands or contiguous areas characterised by similar geographical isolation (for example, peninsulas or mountain areas) that have:
- a GDP per capita below or equal to the EU-27 average <sup>(54)</sup>, or;
  - an unemployment rate above or equal to 115 % of the national average <sup>(55)</sup>, or;
  - less than 5 000 inhabitants.
- (d) Criterion 4: Statistical regions at level 3, or parts of level 3 that form contiguous areas, that are adjacent to an 'a' area or that share a land border with a country outside the EEA or the European Free Trade Association (EFTA).
- (e) Criterion 5: contiguous areas of at least 50 000 inhabitants <sup>(56)</sup> that are undergoing major structural change or are in serious relative decline, provided that such areas are not located in Statistical regions at level 3 or contiguous areas that fulfil the conditions to be designated as predefined areas or under Criteria 1 to 4 <sup>(57)</sup>.
- (152) For the purpose of applying the criteria set out in paragraph (151), the notion of contiguous areas refers to whole local administrative unit 2 (LAU 2) <sup>(58)</sup> areas or to a group of whole LAU 2 areas <sup>(59)</sup>. A group of LAU 2 areas will be considered to form a contiguous area if each of those areas in the group shares an administrative border with another area in the group <sup>(60)</sup>.
- (153) Compliance with the population coverage allowed for each EFTA State will be determined on the basis of the most recent data on the total resident population of the areas concerned, as published by the national statistical office.

#### 5.4. MAXIMUM AID INTENSITIES APPLICABLE TO REGIONAL INVESTMENT AID

- (154) The aid intensity in 'c' areas must not exceed:
- (a) 15 % GGE in sparsely populated areas and in areas (Statistical regions at level 3 or parts of such regions) that share a land border with a country outside the EEA or the EFTA;
  - (b) 10 % GGE in non-predefined 'c' areas.

##### 5.4.1. Increased aid intensities for SMEs

- (155) The maximum aid intensities laid down in paragraph (154) may be increased by up to 20 percentage points for small enterprises or by up to 10 percentage points for medium-sized enterprises <sup>(61)</sup>.

#### 5.5. NOTIFICATION AND DECLARATION OF COMPATIBILITY

- (156) Following the adoption of these guidelines, each EFTA State should notify to the Authority a single regional aid map applicable from 1 July 2014 to 31 December 2020. Each notification should include the information specified in the form in Annex III.

<sup>(54)</sup> To determine if such islands or contiguous areas have a GDP per capita below or equal to the EU-27 average, the EFTA State may refer to data provided by its national statistical office or other recognised sources.

<sup>(55)</sup> To determine if such islands or contiguous areas have an unemployment rate above or equal to 115 % of the national average, the EFTA State may refer to data provided by its national statistical office or other recognised sources.

<sup>(56)</sup> This population threshold will be reduced to 25 000 inhabitants for EFTA States that have a non-predefined 'c' coverage of less than 1 million inhabitants, to 10 000 inhabitants for EFTA States whose total population is below 1 million inhabitants, or to 5 000 inhabitants for islands or contiguous areas characterised by similar geographical isolation.

<sup>(57)</sup> For the purpose of applying Criterion 5, the EFTA State must demonstrate that the applicable conditions are fulfilled by comparing the areas concerned with the situation of other areas in the same EFTA State or in other EFTA States on the basis of socioeconomic indicators concerning structural business statistics, labour markets, household accounts, education, or other similar indicators. For this purpose, the EFTA State may refer to data provided by its national statistical office or other recognised sources.

<sup>(58)</sup> The EFTA State may refer to LAU 1 areas in place of LAU 2 areas if those LAU 1 areas have a smaller population than the LAU 2 area which they form part of.

<sup>(59)</sup> The EFTA State may nevertheless designate parts of an LAU 2 area (or LAU 1 area), provided that the population of the LAU area concerned exceeds the minimum population required for contiguous areas under Criteria 1 or 5 (including the reduced population thresholds for those criteria) and that the population of the parts of that LAU area is at least 50 % of the minimum population required under the applicable criterion.

<sup>(60)</sup> In the case of islands, administrative borders include maritime borders with other administrative units of the EFTA State concerned.

<sup>(61)</sup> The increased aid intensities for SMEs will not apply to aid awarded for large investment projects.

- (157) The Authority will examine each notified regional aid map on the basis of these guidelines and will adopt a decision approving the regional aid map for the EFTA State concerned. Each regional aid map will be published in the *Official Journal* and the EEA Supplement thereto and will constitute an integral part of these guidelines.

## 5.6. AMENDMENTS

### 5.6.1. Population reserve

- (158) On its own initiative, an EFTA State may decide to establish a reserve of national population coverage consisting of the difference between the population coverage ceiling for that EFTA State, as allocated by the Authority <sup>(62)</sup>, and the coverage used for the 'c' areas designated in its regional aid map.
- (159) If an EFTA State has decided to establish such a reserve, it may, at any time, use the reserve to add new 'c' areas in its map until its national coverage ceiling is reached. For this purpose, the EFTA State may refer to the most recent socioeconomic data provided by Eurostat or by its national statistical office or other recognised sources. The population of the 'c' areas concerned should be calculated on the basis of the population data used for establishing the initial map.
- (160) The EFTA State must notify the Authority each time it intends to use its population reserve to add new 'c' areas prior to putting into effect such amendments.

### 5.6.2. Mid-term review

- (161) If necessary, the Authority will carry out, at the same time as the European Commission in June 2016, a mid-term review to identify possible areas that may become eligible for regional aid under the Article 61(1)(a) of the EEA Agreement and the level of the aid intensity corresponding to their GDP per capita.

## 6. APPLICABILITY OF REGIONAL AID RULES

- (162) The Authority extends the Guidelines on national regional aid for 2007-2013 <sup>(63)</sup> and the Criteria for an in-depth assessment of regional aid to large investment projects <sup>(64)</sup> until 30 June 2014.
- (163) The regional aid maps approved on the basis of the Guidelines on national regional aid for 2007-13 expire on 31 December 2013. The transition period of six months laid down in Article 44(3) of the general block exemption regulation (GBER) <sup>(65)</sup> therefore does not apply to regional aid schemes implemented under the GBER. To grant regional aid after 31 December 2013 on the basis of existing block exempted schemes, EFTA States are invited to notify the prolongation of the regional aid maps in due time to allow the Authority to approve a prolongation of those maps before 31 December 2013. In general, the schemes approved on the basis of the regional aid guidelines 2007-13 expire at the end of 2013 as stated in the corresponding Authority decision. Any prolongation of such schemes must be notified to the Authority in due time.
- (164) The Authority will apply the principles set out in these guidelines for assessing the compatibility of all regional aid intended to be awarded after 30 June 2014. Regional aid awarded unlawfully or regional aid intended to be awarded after 31 December 2013 and before 1 July 2014 will be assessed in accordance with the Guidelines on national regional aid for 2007-2013.

<sup>(62)</sup> See paragraph 142.

<sup>(63)</sup> OJ L 54, 28.2.2008, p. 1 and EEA Supplement No 11, 28.2.2008, p. 1. Available at <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

<sup>(64)</sup> OJ L 206, 2.8.2012, p. 13 and EEA Supplement No 42, 2.8.2012, p. 1. Available at <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

<sup>(65)</sup> Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3), inserted into Annex XV of the EEA Agreement, point 1j, by Decision No 120/2008 (OJ L 339, 18.12.2008, p. 111 and EEA Supplement No 79, 18.12.2008, p. 20), which entered into force on 8 November 2008.



- (165) Since they must be consistent with the regional aid map, notifications of regional aid schemes or of aid measures intended to be awarded after 30 June 2014, cannot be considered complete until the Authority has adopted a decision approving the regional aid map for the EFTA State concerned in accordance with the arrangements described in Subsection 5.5. Accordingly, the Authority will in principle not examine notifications of regional aid schemes which are intended to apply after 30 June 2014 or notifications of individual aid intended to be awarded after that date before it has adopted a decision approving the regional aid map for the EFTA State concerned.
- (166) The Authority considers that the implementation of these guidelines will lead to substantial changes in the rules applicable to regional aid in the EEA. Furthermore, in the light of the changed economic and social conditions in the EEA, it appears necessary to review the continuing justification for and effectiveness of all regional aid schemes, including both investment aid and operating aid schemes.
- (167) For these reasons, the Authority proposes the following appropriate measures to EFTA States pursuant to Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement:
- (a) EFTA States must limit the application of all existing regional aid schemes which are not covered under a block exemption regulation and of all regional aid map to aid intended to be awarded on or before 30 June 2014;
  - (b) EFTA States must amend other existing horizontal aid schemes providing specific treatment for aid to projects in assisted areas in order to ensure that aid to be awarded after 30 June 2014 complies with the regional aid map applicable on the date the aid is awarded;
  - (c) EFTA States should confirm their acceptance of the proposals above by 31 December 2013.

#### **7. REPORTING AND MONITORING**

- (168) In accordance with Article 21 of Part II of Protocol 3 to the Surveillance and Court Agreement in conjunction with Articles 5 and 6 of Decision No 195/04/COL EFTA States must submit annual reports to the Authority.
- (169) EFTA States shall transmit to the Authority information on each individual aid exceeding EUR 3 million granted under a scheme, in the format laid down in Annex IV, within 20 working days from the day on which the aid is granted.
- (170) EFTA States must maintain detailed records regarding all aid measures. Such records must contain all information necessary to establish that the conditions regarding eligible costs and maximum aid intensities have been fulfilled. These records must be maintained for 10 years from the date of award of the aid and must be provided to the Authority upon request.

#### **8. REVISION**

- (171) The Authority may decide to amend these guidelines at any time if this should be necessary for reasons associated with competition policy or to take account of other EEA policies and international commitments or for any other justified reason.
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## ANNEX I

**FORM FOR PROVIDING INFORMATION ON THE REGIONAL AID MAPS**

- (1) EFTA States must provide information for each of the following categories of areas proposed for designation, if applicable:
  - sparsely populated areas;
  - non-predefined areas 'c' areas designated on the basis of Criterion 1;
  - non-predefined areas 'c' areas designated on the basis of Criterion 2;
  - non-predefined areas 'c' areas designated on the basis of Criterion 3;
  - non-predefined areas 'c' areas designated on the basis of Criterion 4;
  - non-predefined areas 'c' areas designated on the basis of Criterion 5;
- (2) Under each category, the EFTA State concerned must provide the following information for each proposed area:
  - identification of the area (using the Statistical regions level 2 or level 3 code of the area, the LAU 2 or LAU 1 code of the areas that form the contiguous area or other official denominations of the administrative units concerned);
  - the proposed aid intensity in the area for the period 2014-20 (indicating any increase of aid intensity as under paragraph 155, if applicable);
  - the total resident population of the area, as stated in paragraph 153.
- (3) For the sparsely populated areas and the non-predefined areas designated on the basis of Criteria 1-5, the EFTA State must provide adequate proof that each of the applicable conditions laid down in paragraphs 149 and 151 to 153 is fulfilled.

## ANNEX II

**DEFINITION OF THE STEEL SECTOR**

For the purpose of these guidelines, 'steel sector' means all activities related to the production of one or more of the following products:

- (a) pig iron and ferro-alloys: pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high-carbon ferro-manganese, not including other ferro-alloys;
- (b) crude and semi-finished products of iron, ordinary steel or special steel: liquid steel cast or not cast into ingots, including ingots for forging semi-finished products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wide coils, with the exception of production of liquid steel for castings from small and medium-sized foundries;
- (c) hot finished products of iron, ordinary steel or special steel: rails, sleepers, fishplates, soleplates, joists, heavy sections 80 mm and over, sheet piling, bars and sections of less than 80 mm and flats of less than 150 mm, wire rod, tube rounds and squares, hot-rolled hoop and strip (including tube strip), hot-rolled sheet (coated or uncoated), plates and sheets of 3 mm thickness and over, universal plates of 150 mm and over, with the exception of wire and wire products, bright bars and iron castings;
- (d) cold finished products: tinplate, terneplate, blackplate, galvanized sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;
- (e) tubes: all seamless steel tubes, welded steel tubes with a diameter of over 406,4 mm.

## ANNEX II(a)

**DEFINITION OF THE SYNTHETIC FIBRES SECTOR**

For the purpose of these guidelines, 'synthetic fibres sector' means:

- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.

## ANNEX III

**APPLICATION FORM FOR REGIONAL INVESTMENT AID**

## 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
- Declaration specifying aid (both de minimis and State aid) already received for other projects in the last 3 years in the same Statistical region level 3 where the new investment will be located. Declaration specifying regional aid received or to be received for the same project by other granting authorities.
- Declaration specifying whether the company has closed a same or similar activity in the EEA two years preceding the date of this application form
- Declaration specifying whether the company has the intention to close down such an activity at the moment of aid application within a period of two years after the investment to be subsidised is completed.

## 2. Information about the project/activity to be supported:

- Short description of the project/activity.
- Short description of expected positive effects for the area concerned (for example: number of jobs created or safeguarded, R & D&I activities, training activities, creation of a cluster)
- Relevant legal basis (national, EEA or both)
- Planned starting date and -end date of the project/activity
- Location(s) of the project

## 3. Information about the financing of the project/activity:

- Investments and other costs linked to it, cost benefit analysis for notified aid measures
- Total eligible costs
- Aid amount needed to execute project/activity
- Aid intensity

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

- Short explanation of the need for aid and its impact on the investment decision or location decision. Alternative investment or location in absence of aid shall be indicated.
- Declaration of absence of an irrevocable agreement between the beneficiary and contractors to conduct the project

## ANNEX IV

## FORM FOR THE TRANSMISSION OF INFORMATION TO THE AUTHORITY UNDER PARAGRAPH 169

<b>Aid reference</b>		
<b>EFTA State</b>		
<b>Granting authority</b>	<b>Name</b>	
	<b>Web address</b>	
<b>Name of the bene-ficiary, VAT number and the group it belongs to</b>		
<b>Type of beneficiary</b>	<b>SME</b>	
	<b>Large enterprise</b>	
<b>Region in which the investment/activity is located</b>	<b>Name of the Region</b> (Statistical region <sup>(1)</sup> )	<b>Regional aid status <sup>(2)</sup></b>
<b>Economic sector(s) in which the beneficiary is active</b>	<b>NACE Rev. 2 and short description</b>	
<b>Aid element, expressed as full amount in national currency <sup>(3)</sup></b>		
<b>Aid instrument <sup>(4)</sup></b>	<b>Grant/Interest rate subsidy</b>	
	<b>Loan/Repayable advances/Reimbursable grant</b>	
	<b>Guarantee</b> (where appropriate with a reference to the Authority decision <sup>(5)</sup> )	
	<b>Tax advantage or tax exemption</b>	
	<b>Other</b> (please specify)	
<b>Date of granting</b>	dd/mm/yyyy	
<b>Objective of the aid</b>		
<b>legal basis, including the implementing provisions and, where appropriate, the scheme under which the aid is granted</b>		

<sup>(1)</sup> Typically, the region is specified at level 2.

<sup>(2)</sup> Article 61(3)(a) EEA (status 'A'), Article 61(3)(c) EEA (status 'C'), unassisted areas i.e. areas not eligible for regional aid (status 'N').

<sup>(3)</sup> Gross grant equivalent, or for risk finance schemes, the amount of the public investment.

<sup>(4)</sup> If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

<sup>(5)</sup> Where appropriate, reference to the Authority decision approving the methodology to calculate the gross grant equivalent.