Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs (Text with EEA relevance)

COMMISSION REGULATION (EU) 2017/1084

of 14 June 2017

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid[(1)], and in particular Article 1(1)(a)(xiv) and Article 1(1)(b) thereof,

After consulting the Advisory Committee on State aid,

Whereas:

(1) Commission Regulation (EU) No 651/2014[(2)] declares that certain categories of aid are compatible with the internal market and exempted from the requirement that they must be notified to the Commission before they are granted. Regulation (EU) No 651/2014 announced that the Commission intended to review the scope of that Regulation with a view to including other categories of aid, and in particular aid for port and airport infrastructure, once sufficient case experience had been acquired.

(2) In the light of the experience acquired by the Commission and in order to simplify and clarify the State aid rules, as well as to reduce the administrative burden of notifying straightforward State aid measures and to allow the Commission to focus on the potentially most distortive cases, aid for port and airport infrastructure should be included in the scope of Regulation (EU) No 651/2014.

(3) Investment aid to regional airports with average annual passenger traffic of up to three million passengers can improve both the accessibility of certain regions and local development, depending on the specificities of each airport. Such investment aid therefore supports the priorities of the Europe 2020 strategy contributing to further economic growth and objectives of common Union interest. The experience acquired

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in the application of the Guidelines on State aid to airports and airlines[3] shows that investment aid to regional airports does not give rise to undue distortion of trade and competition, provided certain conditions are met. Investment aid to regional airports should therefore be covered by the block exemption in Regulation (EU) No 651/2014, provided that those conditions are fulfilled. It would not be appropriate to establish a notification threshold in terms of the amount of aid, since the competitive impact of an aid measure depends mainly on the size of the airport and not on the amount of aid.

(4) The conditions for the exemption of investment aid from the notification requirement should aim at limiting distortions of competition that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, investment aid should fulfil two conditions. The aid intensity should not exceed a maximum permissible aid intensity, which varies according to the size of the airport. In addition, the aid amount should not exceed the difference between the eligible costs and the operating profit of the investment. For very small airports of up to 200 000 passengers per annum, the investment aid should only be required to fulfil one of those conditions. The compatibility conditions should ensure open and non-discriminatory access to the infrastructure. The exemption should not apply to investment aid granted to airports located in the vicinity of an existing airport from which scheduled air services are operated, because aid to such airports entails a higher risk of distortion of competition and should therefore be notified to the Commission, with the exception of aid granted to very small airports with up to 200 000 passengers per annum, which is unlikely to result in significant distortion of competition.

(5) Operating aid to very small airports with up to 200 000 passengers per annum does not give rise to undue distortion of trade and competition, provided certain conditions are met. The compatibility conditions should, in particular, ensure that the aid amount does not exceed the operating losses and a reasonable profit and that there is open and non-discriminatory access to the infrastructure. In addition, the aid should not be granted under the condition that the airport operator concludes arrangements with one or more airlines relating to airport charges, marketing payments or other financial aspects of the airline's operations at that airport. Arrangements between an airport which has public resources at its disposal and an airline may, under certain circumstances, constitute State aid to the airline concerned[4], and such aid should remain fully subject to the notification requirement of Article 108(3) of the Treaty.

(6) Maritime ports are of strategic importance for achieving the smooth functioning of the internal market and the strengthening of economic, social and territorial cohesion, as set out, inter alia, in the Europe 2020 Strategy and in the Commission White Paper ‘Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system’[5]. As highlighted in the Communication ‘Ports: an engine for growth’[6], the effective operation of ports in all Union maritime regions requires efficient public and private investment. Investments are necessary, in particular, for the adaptation of access infrastructure to ports and of port infrastructure to the increased size and complexity of the fleet, to the use of alternative fuel infrastructure and to stricter requirements on environmental performance. The lack of high quality port

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infrastructure results in congestion and extra costs for shippers, transport operators and consumers.

(7) The development of inland ports and their integration into multi-modal transport is a major objective of the Union's transport policy. The Union rules explicitly aim at reinforcing transport intermodality and the shift towards more environmentally-friendly modes of transport such as rail and sea/inland waterway transport.

(8) The conditions for the exemption of aid to ports from the notification requirement should aim at limiting distortions of competition that would undermine a level playing field in the internal market, in particular by ensuring the proportionality of the aid amount. In order to be proportionate, the aid should fulfil two conditions. The aid intensity should not exceed a maximum permissible aid intensity, which for maritime ports varies according to the size of the investment project. In addition, the aid amount should not exceed the difference between the eligible costs and the operating profit of the investment, except for very small aid amounts, for which a simplified approach is appropriate in order to reduce the administrative burden. The compatibility conditions should also ensure that any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure is assigned on a competitive, transparent, non-discriminatory and unconditional basis, without prejudice to the Union rules on public procurement and concessions, where applicable. Equal and non-discriminatory access to the infrastructure should also be ensured.

(9) Investments included in the work plans of the Core Network Corridors set up by Regulation (EU) No 1315/2013 of the European Parliament and of the Council[(7)] are projects of common interest with a particular strategic interest for the Union. Maritime ports that are part of those networks constitute the entry and exit points of goods being transported in and out of the Union. Inland ports that are part of those networks are key factors enabling the multimodality of the network. Investments aiming to improve the performance of those ports should therefore benefit from a higher notification threshold.

(10) In the light of the experience acquired in the application of Regulation (EU) No 651/2014 and Commission Regulation (EU) No 702/2014[(8)], it is also appropriate to adapt certain provisions of those Regulations.

(11) In particular, as regards regional operating aid schemes for outermost regions, the application of different rules for the compensation of additional transport costs and of other additional costs has proven difficult in practice and not appropriate to address the structural handicaps referred to in Article 349 of the Treaty, remoteness and insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, and the provisions should therefore be replaced by a method that applies to all additional costs. The implementation of regional investment and operating aid measures in outermost regions which, amongst others, benefit undertakings active in the fishery sector should be in line with the Union's obligations resulting from international agreements to which it is a contracting party. Therefore, such regional investment and operating aid measures should not benefit vessels engaged in illegal, unreported and unregulated fishing or contribute to overfishing or to an increase in the fishing capacity of vessels.

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(12) In view of the limited negative effects on competition of aid for culture and heritage conservation and of aid for sport and multifunctional recreational infrastructures, the notification thresholds for aid in those areas should be increased.

(13) In order to simplify the calculation of eligible costs under Regulation (EU) No 651/2014 and Regulation (EU) No 702/2014 for operations that are at least partly financed through a Union fund that allows the use of simplified cost options, the provisions relating to eligible costs should be adapted.

(14) Under the Horizon 2020 SME-instrument as referred in Article 22(2) of Regulation (EU) No 1291/2013 of the European Parliament and of the Council[9], projects can receive a Commission Seal of Excellence quality label. Such projects, given their limited aid amounts of maximum EUR 2,5 million per project and the fact that they are targeting exclusively SMEs, can be exempted from the notification requirement in accordance with the rules of Regulation (EU) No 651/2014.

(15) Regulation (EU) No 651/2014 and Regulation (EU) No 702/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 651/2014 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (k) and (l) are replaced by the following:

(k) aid for sport and multifunctional recreational infrastructure;

(l) aid for local infrastructures;;

(ii) the following points (m) and (n) are added:

(m) aid for regional airports;

(n) aid for ports.;

(b) in paragraph 3, the first subparagraph is replaced by the following:

This Regulation shall not apply to:

(a) aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council[10] with the exception of training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, aid for disadvantaged workers and workers with disabilities, regional investment aid in outermost regions and regional operating aid schemes;

(b) aid granted in the primary agricultural production sector, with the exception of regional investment aid in outermost regions, regional

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operating aid schemes, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and workers with disabilities;

(c) aid granted in the sector of processing and marketing of agricultural products, in the following cases:

(i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;

(ii) where the aid is conditional on being partly or entirely passed on to primary producers;

(d) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision 2010/787/EU[(11)];

(e) the categories of regional aid referred to in Article 13.;

(c) paragraph 4 is amended as follows:

(i) point (a) is replaced by the following:

(a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by certain natural disasters;;

(ii) point (c) is replaced by the following:

(c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters, start-up aid schemes and regional operating aid schemes, provided those schemes do not treat undertakings in difficulty more favourably than other undertakings.;

(2) Article 2 is amended as follows:

(a) point 39 is replaced by the following:

(39) "operating profit" means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made;;

(b) point 42 is replaced by the following:

(42) "regional operating aid" means aid to reduce an undertaking's current expenditure. This includes cost categories such as personnel costs,