

## RECOVERY AND RESILIENCE FACILITY – STATE AID

### Guiding template: Digitalisation of public administration, including healthcare

#### *Link to European Flagship: Modernise*

*Disclaimer: this is a working document drafted by the services of the European Commission for information purposes and it does not express an official position of the Commission on this issue, nor does it anticipate such a position. It is not intended to constitute a statement of the law and is without prejudice to the interpretation of the Treaty provisions on State aid by the Union Courts. In any case, the services of the Directorate General for Competition (DG Competition) are available to provide further guidance to Member States on the issues below in the context of the preparation of their respective Recovery and Resilience Plans.*

### **I. Objective of the guiding template**

1. The outbreak of the coronavirus pandemic has changed the economic outlook for the years to come in the European Union. Investments and reforms are needed more than ever to ensure convergence and a sustainable economic recovery. Carrying out reforms and investing in the EU's common priorities, notably green, digital and social resilience will help create jobs and sustainable growth, while modernising our economies, and allow the Union to recover in a balanced, forward-looking and sustained manner.
2. The Recovery and Resilience Facility ("the Facility") aims at mitigating the economic and social impact of the coronavirus pandemic and at making the EU economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the twin green and digital transitions.
3. State aid rules apply in the framework of the Facility. Member States should therefore ensure that all investments comply with EU State aid rules and follow all regular procedures and rules<sup>1</sup>.
4. With this guiding template, DG Competition aims at assisting Member States upfront with the design and preparation of the State aid elements of their recovery plans, and to provide guidance on the State aid-related aspects of those investments which are expected to be most common.
5. The investments covered by this guiding template have been chosen in line with the European flagships of the Commission's Annual Sustainable Growth Strategy 2021<sup>2</sup>. These flagships, which will result in tangible benefits for the economy and citizens across the EU, aim at strengthening economic and social resilience, addressing issues that are common to all Member States, need significant investments, create jobs and growth and are needed for the digital-green twin transition. Pursuing these flagships will contribute to the success of the recovery of Europe.
6. The guiding template follows a uniform structure, providing sector-specific guidance as to when:

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<sup>1</sup> Commission staff working document - Guidance to Member States Recovery and Resilience Plans - Part 1. Also the relevant public procurement rules must be respected, where applicable.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — Annual Sustainable Growth Strategy 2021, COM/2020/575 final.

- i. Instances in which the existence of State aid may be excluded, and therefore prior notification to the Commission is not necessary.
  - ii. State aid would be involved but no notification is necessary, and specific rules may apply (in case of aid exempted from the notification obligation); and
  - iii. State aid would be involved and a notification is necessary, with reference to the main applicable State aid rules.
7. The guiding template also contains ‘boxes’ with examples of the State aid assessment of the investments and reforms contained in the components published by the Commission,<sup>3</sup> per flagship. The aim is merely illustrative, to provide additional clarifications to Member States on the State aid assessment contained in those components.

## **II. Description of the investment**

8. The COVID-19 pandemic and the related confinement measures have demonstrated the urgent need to develop adequate digital solutions for public services in order to modernise the public administration, and by doing so guaranteeing the continuity of its services, and enhancing its efficiency. The digitalisation of public administration will increase the effectiveness, efficiency and relevance of government action, taking into account current challenges, needs, and expectations of both citizens and businesses.
9. Such investments and reforms could cover a vast array of purposes and activities, such as the digitalisation of processes, the development of new digital products (or their upgrade), the purchase of IT software and hardware, the digitalisation of certain services or certain solutions, or the development of digital skills for civil servants and employees. These investments could benefit a wide range of beneficiaries insofar as they contribute to the digitalisation of public administration, including the healthcare and judicial systems.
10. For ease of reference, these investments and reforms will be qualified throughout this text as "digitalisation of public administration". They will contribute to the *Modernise* flagship.<sup>4</sup>

## **III. Instances in which the existence of State aid may be excluded**

11. The following sections present a comprehensive, but not exhaustive, number of separate instances in which the application of State aid rules or the existence of State aid may be excluded. Given the cumulative nature of the criteria of Article 107(1) TFEU, if one of the following criteria is not met, the presence of State aid can be excluded and therefore there is no need to notify the measure to the Commission for approval prior to its implementation.

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<sup>3</sup> Available at [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en#example-of-component-of-reforms-and-investments](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#example-of-component-of-reforms-and-investments).

<sup>4</sup> More information on this flagship can be found here: [https://ec.europa.eu/info/files/example-component-reforms-and-investments-public-administration\\_en](https://ec.europa.eu/info/files/example-component-reforms-and-investments-public-administration_en).

A. *No economic activity*

a. *Exercise of public power*

12. Unless the Member State concerned has decided to introduce market mechanisms, the activities that the State normally carries out in the exercise of its public powers or those that are not used for offering goods or services on a market, are not of an economic nature. Their funding consequently falls outside the scope of State aid rules, as does the public funding of the digitalisation of these activities.
13. The State acts by exercising public power when performing its functions through *inter alia*: the army or the police<sup>5</sup>; the organisation, financing and enforcement of prison sentences<sup>6</sup>; customs<sup>7</sup>; antipollution surveillance<sup>8</sup>; the justice system; air navigation safety and control<sup>9</sup>; maritime traffic control and safety<sup>10</sup>; the development and revitalization of public land by public authorities<sup>11</sup>; the collection of data to be used for public purposes on the basis of a statutory obligation imposed on the undertakings concerned to disclose such data<sup>12</sup>; etc.

b. *Particular provisions*

i. *Healthcare*

14. Healthcare providers within a national healthcare system pursuing a social objective, underpinned by the principle of solidarity, and which operate under State supervision are considered to carry out non-economic activities.<sup>13</sup> Therefore, public funding

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<sup>5</sup> Commission Decision of 7 December 2011 on State aid SA.32820 (2011/NN) — United Kingdom — Aid to Forensic Science Services (OJ C 29, 2.2.2012, p. 4), paragraph 8.

<sup>6</sup> Commission Decision of 19 July 2006 on State aid N 140/06 — Lithuania — Allotment of subsidies to the State Enterprises at the Correction Houses (OJ C 244, 11.10.2006, p. 12).

<sup>7</sup> See Commission decision of 19 June 2013 in case SA. 35738 — Greece — Aid for the upgrading of Katakolo port, OJ C 204, 18.07.2013, p. 3.

<sup>8</sup> Judgment of the Court of Justice of 18 March 1997, *Calì & Figli*, C-343/95, ECLI:EU:C:1997:160, paragraph 22.

<sup>9</sup> Judgment of the Court of Justice of 19 January 1994, *SAT/Eurocontrol*, C-364/92, ECLI:EU:C:1994:7, paragraph 27; Judgment of the Court of Justice of 26 March 2009, *Selex Sistemi Integrati v Commission*, C-113/07 P, ECLI:EU:C:2009:191, paragraph 71.

<sup>10</sup> Commission Decision of 16 October 2002 on State aid N 438/02 — Belgium — Aid to port authorities, (OJ C 284, 21.11.2002, p. 2).

<sup>11</sup> Commission decision of 27 March 2014 on State aid SA.36346 — Germany — GRW land development scheme for industrial and commercial use (OJ C 141, 9.5.2014, p. 1). In the context of a measure that supported the revitalisation (including decontamination) of public land by local authorities, the Commission found that making public terrain ready to build upon and ensuring that it is connected to utilities (water, gas, sewage and electricity) and transport networks (rail and roads) did not constitute an economic activity, but was part of the public tasks of the State, namely the provision and supervision of land in line with local urban and spatial development plans.

<sup>12</sup> Case C-138/11 *Compass-Datenbank GmbH* [2012] ECR I-0000, paragraph 40.

<sup>13</sup> Case C-262/18 P and C-271/18 P, *Dóvera zdravotná poisťovňa, a.s.*, EU:C:2020:450, paragraphs 30-31; Judgment of the General Court of 4 March 2003, *FENIN*, T-319/99, ECLI:EU:T:2003:50 and Judgment of the Court of Justice of 11 July 2006, *FENIN*, C-205/03 P, ECLI:EU:C:2006:453, paragraphs 25 to 28; Commission decision of 19 December 2012 on State aid SA.20829 — Italy — Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes (OJ L 166, 18 June 2013, p. 24), recitals 169-171; Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (“Notice on the notion of State aid”), OJ C 262, 19.7.2016, p. 1, paragraph 24.

granted to digitalise such healthcare providers falls outside the scope of State aid rules, provided the administrations procuring those digitalisation goods and services only use them in the exercise of the mentioned non-economic activities.<sup>14</sup>

15. Activities that in themselves could be of an economic nature but are carried out merely for the purpose of providing a non-economic service, are not of an economic nature. For instance, a healthcare provider that purchases goods for the purpose of offering a non-economic service does not act as an undertaking simply because it is a purchaser in a given market.<sup>15</sup>
16. On the other hand, healthcare providers that offer their services for remuneration (paid directly by patients or by their insurance<sup>16</sup>) carry out an economic activity.<sup>17</sup> The fact that such healthcare services are provided by a public provider is not sufficient for the activity to be classified as non-economic. As a result, the public funding granted to digitalise such services for providers could fall within the scope of State aid rules.

*ii. Social security*

17. Compulsory social security schemes, under the control of the State, pursuing an exclusively social objective, functioning according to the principle of solidarity, offering insurance benefits independently of contributions and of the earning of the insured person, do not involve an economic activity.<sup>18</sup> As a result, public funding granted to digitalise such schemes falls outside the scope of State aid rules, provided the administrations procuring those digitalisation goods and services only use them in the exercise of the mentioned non-economic activities.
18. In contrast, optional schemes, functioning on a profit-making basis, which require supplementary insurances and which operate according to a principle of capitalisation under which there is a direct link between the amount of the contributions paid by the insured person and their financial performance, on the one hand, and the benefits provided to that insured person, on the other, are engaged in an economic activity. As a result, the public funding granted to digitalise such schemes could fall within the scope of State aid rules.

*iii. Education*

19. Public education organized within the national educational system, funded and supervised by the State may be considered as a non-economic activity<sup>19</sup>, and therefore its funding falls outside the scope of State aid rules.
20. In particular, educational systems that are financed entirely or mainly by public funds and not by pupils or their parents are considered non-economic and their financing does not fall within the scope of State aid rules<sup>20</sup>. The same conclusion applies to the

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<sup>14</sup> Case C-262/18 P and C-271/18 P, *Dôvera zdravotná poisťovňa a.s.*, EU:C:2020:450, paragraph 48.

<sup>15</sup> Notice on the notion of State aid, paragraph 25.

<sup>16</sup> See, for instance, Judgment of the Court of Justice of 12 July 2001, *Geraets-Smits and Others*, C-157/99, ECLI:EU:C:2001:404, paragraphs 53 to 58.

<sup>17</sup> Notice on the notion of State aid, paragraph 26.

<sup>18</sup> Judgment of the Court of Justice of 11 June 2020, *Dôvera zdravotná poisťovňa, a.s.*, C-262/18 P and C-271/18 P, not yet published, paragraphs 30 and 31; Notice on the notion of State aid, paragraph 20.

<sup>19</sup> Notice on the notion of State aid, paragraph 28.

<sup>20</sup> Notice on the notion of State aid, paragraph 29.

financing of their digitalisation, provided the administrations procuring those digitalisation goods and services only use them in the exercise of the mentioned non-economic activities.

21. In the same vein, the fact that pupils or their parents are required to pay a tuition or enrolment fee which contribute only to a small fraction of the true costs of the operating expenses of the system does not alter the non-economic nature of the educational activity conducted, as such payment cannot be considered a genuine remuneration for the service provided.<sup>21</sup>
22. These principles can cover public educational services such as private and public primary schools<sup>22</sup>, and kindergartens<sup>23</sup>, secondary teaching activities in universities<sup>24</sup>, and the provision of education in universities<sup>25</sup>. By way of example, an investment to support the purchase and installation of digital equipment in one of these institutions providing non-economic services would not entail State aid.
23. In contrast, educational services predominantly financed by parents or pupils or other commercial means should be qualified as economic in nature. Accordingly, the public financing of educational systems used for such economic activities may constitute State aid<sup>26</sup>, as could do the financing of their digitalisation.

#### *iv. Culture*

24. Public funding of a cultural or heritage conservation<sup>27</sup> activity that is accessible to the general public free of charge fulfils a purely social and cultural purpose which is non-economic in nature.<sup>28</sup> Accordingly, the public financing of the digitalisation of these activities would fall outside the scope of State aid rules.
25. In the same vein, the fact that visitors of a cultural institution open to the general public are required to pay a monetary contribution only covering a fraction of the true costs does not alter the non-economic nature of the culture activity conducted, as it cannot be considered as genuine remuneration for the service provided.<sup>29</sup>

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<sup>21</sup> Notice on the notion of State aid, paragraph 29. See also judgment of the Court of Justice of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania*, C-74/16, ECLI:EU:C:2017:496, paragraphs 51 to 53, on separation of accounts and cross-subsidisation between economic and non.-economic activities.

<sup>22</sup> Judgment of the Court of Justice of 11 September 2007, *Commission v Germany*, C-318/05, ECLI:EU:C:2007:495, paragraphs 65 to 71; Judgment of the Court of Justice of 11 September 2007, *Schwarz*, C-76/05, ECLI:EU:C:2007:492, paragraphs 37 to 47.

<sup>23</sup> Judgment of the EFTA Court of 21 February 2008 in Case E-5/07 *Private Barnehagers Landsforbund v EFTA Surveillance Authority* EFTA Ct. Rep [2008] p. 62.

<sup>24</sup> Judgment of the Court of Justice of 18 December 2007, *Jundt*, C-281/06, ECLI:EU:C:2007:816, paragraphs 28 to 39.

<sup>25</sup> Judgment of the Court of Justice of 7 December 1993, *Wirth*, C-109/92, ECLI:EU:C:1993:916, paragraphs 14 to 22.

<sup>26</sup> Notice on the notion of State aid, paragraph 30.

<sup>27</sup> The area of culture and heritage conservation covers a vast array of purposes and activities, inter alia, museums, archives, libraries, artistic and cultural centres or spaces, theatres, opera houses, concert halls, archaeological sites, monuments, historical sites and buildings, traditional customs and crafts, festivals and exhibitions, as well as cultural and artistic education activities.

<sup>28</sup> Notice on the notion of State aid, paragraph 34.

<sup>29</sup> Notice on the notion of State aid, paragraph 34.

26. In contrast, cultural activities predominantly financed by visitor or user fees or by other commercial means (for example, commercial exhibitions, cinemas, commercial music performances and festivals and arts schools predominantly financed from tuition fees) should be qualified as economic in nature. Similarly, heritage conservation or cultural activities benefitting exclusively certain undertakings rather than the general public (for example, the restoration of a historical building used by a private company) should normally be qualified as economic in nature.<sup>30</sup> Accordingly, the public financing of the digitalisation of such economic activities may constitute State aid.
27. Finally, many cultural activities are objectively non substitutable (for example, keeping public archives holding unique documents) and thus exclude the existence of a genuine market and the economic nature of the activity.<sup>31</sup> Consequently, the public funding of the digitalisation of such activities falls outside the scope of State aid rules provided the administrations procuring those digitalisation goods and services only use them in the exercise of the activities.

*c. Public administrations that carry out both economic and non-economic activities*

28. If a public administration is involved in both economic and non-economic activities, public funding enabling the digitalisation of that administration could fall under State aid rules only insofar as it would cover the costs linked to the economic activities in question. In such circumstances, when Member States ensure, based on a proper separation of accounts, that the public funding is only provided for the non-economic activities and that there is no cross-subsidization of the economic activities, no State aid is involved<sup>32</sup>.

*B. No State resources*

29. Measures that do not involve the transfer of public resources exclude the existence of State aid<sup>33</sup>. For example, developing national education programs on digitalisation or in-house trainings on digitalisation do not generally imply the transfer of public resources to undertakings or waiver of public revenues in their favour<sup>34</sup>.

*C. No selectivity*

30. Measures that are of general application and do not favour certain undertakings, or the production of certain goods, are not selective and do not constitute State aid.

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<sup>30</sup> Notice on the notion of State aid, paragraph point 35.

<sup>31</sup> Notice on the notion of State aid, paragraph 36.

<sup>32</sup> See judgment of the Court of Justice of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania*, C-74/16, ECLI:EU:C:2017:496, paragraphs 51 to 53, on separation of accounts and cross-subsidisation between economic and non-economic activities.

<sup>33</sup> The concept of ‘transfer of public resources’ covers many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. A positive transfer of funds does not have to occur; foregoing State revenue is sufficient. In addition, the measure must be imputable to the State. See Notice on the notion of State aid, section 3.

<sup>34</sup> Note however that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

#### D. No advantage

31. By subsidising the digitalisation of public administration, Member States may support either the public administration or entity directly (in such a case, the public administration or entity could digitalise its services itself or it could outsource this digitalisation) or support the goods or services providers.
32. In both cases, the public funding may grant an advantage to the public administration or entity (if and to the extent to which it performs an economic activity) and/or to the goods or services providers in charge of the digitalisation.
33. However, in certain circumstances, the existence of an economic advantage may be excluded at the level of the public administration and/or at the level of the providers.
34. If the public administration or entity performs an economic activity but is entrusted with a Service of General Economic Interest (SGEI), the costs of digitalisation of its services may be considered as an eligible cost in relation to the SGEI mission provided. An economic advantage may be excluded at the level of the public administration or entity if: (i) it has clearly defined public service obligations to discharge; (ii) the parameters of compensation have been established in advance in an objective and transparent manner; (iii) there is no compensation paid beyond the net costs of providing the public service and a reasonable profit; (iv) the SGEI has been either assigned through a public procurement procedure that ensures the provision of the service at the least cost to the community or the compensation does not exceed what an efficient company would require. If these conditions are fulfilled, an economic advantage is excluded at the level of the public administration or entity, no matter whether the public administration or entity decided to tender out the digitalisation to an external provider or not.
35. An advantage can be excluded at the level of the goods or services provider if the provider is selected on the basis of a competitive, transparent, non-discriminatory and unconditional tender in line with the principles of the TFEU in public procurement<sup>35</sup> and if the advantage is fully passed on to the public administration or entity, for example in the form of a price reduction. If the funding received is entirely passed on to the public administration or entity, the provider receives no advantage from the State and would therefore not be subject to State aid rules.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – A public administration fit for the future](#)

**Reform 1.2. Enhancement of the regulatory framework and strengthening of preventive and control mechanisms designed to combat fraud, notably in relation to public procurement, and preserve the integrity of public service:** *The proposed reform complies with State Aid rules by setting up a competitive system for procurement for any consultancy services.*

**Reform 2.2: Deepening the digital transformation of public administrations, with a better use of public procurement to enable innovative GovTech solutions developed by SMEs and start-ups, including from rural areas:** *As for the public procurement part, the proposed reform complies with State Aid rules by setting up strategies – and where appropriate rules - for better and competitive public procurement. The competition is open to all national and European economic players [...].*

<sup>35</sup> Notice on the notion of State aid, paragraphs 89-96.

**Investment 1.5: Building capacities for the use of data and novel tools such as predictive analytics and AI:** *The proposed reform complies with State Aid rules by setting up a competitive system for procurement. The competition is open to all national and European economic players [...].*

**Investment 2.3: Digitisation, interconnection and interoperability of registries and services for data exchange between national and European administrations; digital infrastructures linked with the European common data spaces, including the European Health Data Space:** *The proposed investment will be implemented following public procurement rules (open tender) and sound financial management principles, ensuring that the State pays a market price for the services procured, there will be thus no State aid granted.*

**Investment 2.4: Equipping the public sector to implement the European Digital Identity (eID) for authentication by national and cross-border users:** *The proposed investment will be implemented following public procurement rules (open tender) and sound financial management principles. The State will thus pay market price for services procured, thus no State aid will be granted.*

**Investment 2.5: Digitalisation of the healthcare and justice systems, customs and tax administrations, with special focus on covering rural and more remote areas:** *The proposed investment will be implemented following public procurement rules (open tender) and sound financial management principles. This will ensure that the State will pay market prices for services procured, thus no State aid will be granted.*

*E. No effect on trade between Member States and no distortion of competition*

36. In cases of very low amounts of aid, distortion of competition can be excluded. This is known as *de minimis* aid. For cases falling under *de minimis*, there is no need for prior approval from the European Commission. Member States do not even have to inform the Commission of such aid.
37. Support granted under the *de minimis* Regulation<sup>36</sup> is not regarded as State aid if no more than EUR 200 000 is granted to a single undertaking over a period of three fiscal years and the other conditions laid down in the *de minimis* Regulation are also respected.
38. In the same vein, public funding granted for the provision of a Service of General Economic Interest not exceeding EUR 500 000 over three years is not regarded as State aid, provided the other conditions of the SGEI *de minimis* Regulation<sup>37</sup> are also fulfilled.
39. Additionally, there may be cases of support measures which have a purely local impact and consequently have no effect on trade between Member States. This is the case if the beneficiary supplies products or services to a limited area within a Member State and is unlikely to attract customers from other Member States, and if it cannot be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishments.

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<sup>36</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1.

<sup>37</sup> Commission Regulation No 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.



#### **IV. Instances in which there is no need to notify for State aid clearance, but other requirements may apply**

40. If a given investment meets the cumulative conditions of Article 107(1) TFEU and thus entails State aid<sup>38</sup>, it may be considered compatible with the internal market and can be granted without notification in the following instances:

##### *A. Aid covered by an existing State aid scheme (conditions for no notification)*

41. If a Member State plans to grant State aid under an aid scheme already approved by Commission decision, it does not need to notify again the scheme to the Commission for approval and can directly provide the support to the beneficiary, as long as the conditions of the authorisation decision are complied with.

42. Moreover, any increase of up to 20% of the original budget of an aid scheme already approved by Commission decision is not considered an alteration to existing aid. If this is the only change to a scheme already authorised by the Commission, it does not need to be re-notified to the Commission for approval<sup>39</sup>.

43. In any event, full compliance with the future Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility should be ensured (see in particular Article 14.1a)<sup>40</sup>.

##### *B. General Block Exemption Regulation (GBER)<sup>41</sup>*

44. If State aid falls under the GBER, Member States do not have to notify such State aid. However, they have to inform the Commission thereof.

45. There is no provision in the GBER specifically concerning the digitalisation of public administration, including healthcare. However, depending on the specific design of the investment by the Member State, it would appear that a number of GBER provisions could be used for actions related to the digitalisation of public administration. In such case, the measure (or part of it) would be exempted from notification if granted in compliance with the applicable GBER provisions:

- Article 31 GBER allows training aid up to EUR 2 million per training project;
- Article 53 GBER allows investment aid for culture and heritage conservation up to EUR 150 million per project, as well as operating aid up to EUR 75 million per beneficiary per year.

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<sup>38</sup> Aid can also take the form of tax advantages, reductions of social security contributions, and other measures mitigating the normal charges of specific undertakings. Fiscal aid can be found compatible under the same rules as other forms of aid (i.e. grants), in particular if the tax advantage is linked to a specific investment or activity.

<sup>39</sup> In case of budget increases to already authorised schemes exceeding 20 % and/or their prolongation up to 6 years, the so-called simplified notification procedure under Article 4 of the Implementing Regulation (Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.04.2004, p. 1) can be used, whereby the Commission aims to complete the assessment of notified State aid measures within one month.

<sup>40</sup> As currently proposed in the Council Presidency compromise proposal of 7 October 2020.

<sup>41</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

46. **Article 31 GBER** allows training aid up to EUR 2 million per training project and can apply to the funding of public administration to provide training to civil servants and personnel for digitalisation purposes. In particular, aid can be granted to the public administration for the following eligible costs<sup>42</sup>: a) trainers' personnel costs, b) trainers' and trainees' operating costs directly relating to the training project, c) costs of advisory services linked to the training project, and d) trainees' personnel costs and general indirect costs for the hours during which the trainees participate in the training. The aid intensity shall not exceed 50% of the eligible costs (excluding specific bonus referred to in Article 31 GBER) and the aid shall not be granted for training necessary to comply with national mandatory standards on training. The provisions of Chapter 1 of the GBER in addition to the specific provisions in Article 31 GBER must be complied with.
47. **Article 53 GBER** allows the granting of investment aid for culture and heritage conservation up to EUR 150 million per project, as well as operating aid up to EUR 75 million per beneficiary per year. Aid under this GBER provision can be granted for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies. For investment aid, only the difference between the eligible costs and the operating profit of the investment can be financed. For operating aid, the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs. The provisions of Chapter 1 of the GBER in addition to the specific provisions in Article 53 GBER must be complied with.

*C. Service of General Economic Interest: SGEI Decision<sup>43</sup>*

48. If and to the extent that the public administration performs an economic activity and is entrusted with an SGEI (in relation to a part or all of its services which qualify as an economic activity), the costs of digitalisation of its services may be considered as an eligible cost in relation to the SGEI mission provided. State aid for the compensation of such SGEI is exempted from notification on the basis of the SGEI Decision, provided that the criteria of that Decision are met, in particular: definition and entrustment of an SGEI, parameters of compensation established ex ante in a transparent manner, amount of compensation not exceeding the costs for the provision of the SGEI and a reasonable profit, a mechanism to ensure the absence of overcompensation. The SGEI Decision is in particular applicable for:
- SGEIs up to EUR 15 million per year;
  - public service compensation granted to hospitals providing medical care, including, where applicable, emergency services, irrespective of the amount;
  - public service compensation for the provision of SGEIs meeting social needs as regards health and long-term care, childcare, access to and reintegration into the

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<sup>42</sup> Please note that the references to 'eligible costs' in this guiding template are to be understood exclusively for the purposes of State aid. Therefore, they have no bearing on whether a particular measure and its associated cost can be financed or not by the Facility.

<sup>43</sup> Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.01.2012, p. 3.

labour market, social housing and the care and social inclusion of vulnerable groups, irrespective of the amount.

## **V. Instances in which notifying for State aid clearance is necessary**

49. If the measure constitutes State aid and does not meet the conditions allowing an exemption from notification, a notification to the Commission for State aid clearance is required. The aim of the present section is to assist Member States in identifying and providing the necessary information to the Commission in the context of pre-notifications and notifications, bearing in mind that the Commission will assess all State aid notifications received from Member States in the context of the Facility as a matter of priority.

### *A. Procedure for pre-notification and notification*

50. In case the planned investment entails State aid and is not exempt from notification, the Member State should, in compliance with Article 108(3) TFEU, proceed to notify the measure to the Commission for approval before implementation.

51. The Commission is committed to assess and treat those cases as a matter of priority and to engage with national authorities early on, in order to address problems in ‘real time’ in the context of the preparation of their Recovery and Resilience Plans. Therefore, informal contacts and pre-notifications are encouraged as soon as possible.

52. The Commission aims to complete the assessment of notified State aid measures within six weeks of receiving a complete notification from the Member State.

### *B. Relevant legal bases for compatibility*

53. Once it has been established that the investment entails State aid, it is necessary to assess whether the aid is compatible with the internal market.

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

55. To assess whether State aid can be considered compatible with the internal market, the Commission analyses whether the design of the aid measure ensures that the positive effect of the aid on the development of the supported economic activity (positive condition) exceeds its potential negative effects on trade and competition (negative condition).

56. In case the Commission has issued guidelines which apply to the aid in question, those rules will provide guidance on how the compatibility assessment is to be carried out and under what conditions. However, there are as such no specific guidelines that would apply to State aid for the digitalisation of public administration, including healthcare (although it will depend of the specific investment)<sup>44</sup>.

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<sup>44</sup> For example, in case training measures are foreseen, the Commission will assess their compatibility in line with the Training Communication (Communication from the Commission — Criteria for the analysis of the compatibility of State aid for training subject to individual notification, OJ C 188, 11.8.2009, p. 1).

57. In its compatibility assessment, the Commission will check whether the conditions of Article 107(3)(c) TFEU are met. In particular:
- The aid measure needs to facilitate the development of economic activities and have an incentive effect without resulting in an infringement of relevant EU law affecting the compatibility test.
  - The aid measure must not unduly affect trading conditions to an extent contrary to the common interest. For those purposes the Commission will check whether the State intervention is needed, appropriate and proportionate and addresses a market failure to achieve the objectives pursued by the measure. The Commission will also verify that transparency of the aid is ensured. Together, these conditions ensure that the distortive effects of the aid are as far as possible limited.
  - The Commission will assess the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States against the common interest. In particular, the Commission will in this step not only consider the benefits of the aid for the beneficiary's economic activity, but also take into account the positive effects of the aid for the community at large.
  - The Commission will finally balance the positive effects with the negative effects of the aid on competition and trade.

## **VI. References**

- Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1.
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.
- Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.01.2012, p. 3.
- Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, OJ C 8, 11.1.2012, p. 4.
- Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011), OJ C8, 11.01.2012, p. 15.
- Commission Regulation No 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.

- Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.