

## RECOVERY AND RESILIENCE FACILITY – STATE AID

### Guiding template: Energy efficiency in buildings

#### *Link to European Flagship: Renovate*

*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 the 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 common to most of those plans.
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:

---

<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 a 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. This guiding template covers investments aiming at improving the energy efficiency of building. Improving energy efficiency of buildings means saving an amount of energy consumed for heating, cooling, ventilating or lighting the building determined by measuring and/or estimating consumption of the building before and after implementation of an energy-efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption. Among other things, energy-efficiency investments can relate to insulation, installation of triple glazing, and/or smart devices improving the efficiency of the energy consumption in a building. This guiding template does not cover investments aiming at reducing the consumption of energy for production processes or the discharging of services.
9. The investments covered by this guiding template can be combined with (i) charging equipment in the building for charging electric vehicles of persons using or visiting the building (for this type of investment reference is made to the guiding template on “*Electric recharging stations and hydrogen stations for road vehicles*”); and/or (ii) integrated on-site renewable electricity and/or heat generation plant and the related storage equipment (for this investment, reference is made to the guiding template on “*Investment/operating aid for energy from renewable sources, including renewably sourced hydrogen production*”).
10. The *Renovate* flagship aims at improving the energy and resource efficiency of public and private buildings and is expected to substantially contribute to achieving the EU’s climate objectives, create a large number of local jobs throughout the Member States and foster digital development through smart living and metering. By 2025, it is expected to contribute to the doubling of the renovation rate and the fostering of deep renovation. This guiding template aims at facilitating the uptake of energy efficiency measures in buildings and thus reducing their emissions.
11. This guiding template focusses on support to the building owner or the tenant, irrespective of the form of aid: grants, subsidised loans, guarantees, tax reductions, etc. It also covers support granted to the building owner or the tenant for improving the energy efficiency of the building in the form of financial instruments. However, this guiding template does not deal with potential direct or indirect aid to the companies

---

<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).

carrying out the energy efficiency works, to energy services providers and to financial intermediaries. Insofar as the State uses financial intermediaries in the implementation of the support measure to the owner or tenant, it is important to verify that also potential indirect support to these intermediaries complies with the applicable State aid framework<sup>4</sup>.

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

12. 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 prior to its implementation.

#### *A. No economic activity*

13. Support for activities which are not of an economic nature, i.e. are not used for offering goods or services on the market, is not considered State aid<sup>5</sup>.

14. This may be the case for the following types of support:

- Direct support to households for the renovation of their own residence provided they do not rent it out and do not otherwise use the own residence for economic activities.
- Direct support to authorities for the renovation of buildings that they own and in which no economic activities are conducted, e.g. buildings where activities pertaining to the exercise of public powers are housed (police, army, justice), buildings housing the offices of the municipal, local, regional or central/federal administration<sup>6</sup>.
- Direct support to entities carrying out non-economic activities for the renovation of buildings that they own and in which they carry out the non-economic activity<sup>7</sup>. Health care, social security and public education are often considered as non-economic activities when they are based on the solidarity principle<sup>8</sup>.

15. If the building is used for both economic and non-economic activities, only the share of the costs linked to the non-economic activities falls outside of State aid rules<sup>9</sup>. In such cases, Member States have to ensure that the public funding provided for the non-economic activities is not used to cross-subsidize the economic activities. This can

---

<sup>4</sup> Article 39 GBER contains specific requirements in this respect.

<sup>5</sup> Whether an activity constitutes or not an economic activity, see Section 2, in particular section 2.4 for health care and 2.5 for education of the 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.

<sup>6</sup> See section 2 of the Notice on the notion of State aid.

<sup>7</sup> However, when the support is granted to the owner of the building who rents it out, the support will relate to an economic activity (the renting out of buildings) even if the building is rented out to entities carrying out non-economic activities.

<sup>8</sup> See sections 2.3, 2.4 and 2.5 of the Notice on the notion of State aid.

<sup>9</sup> See by analogy paragraph 205 of the Notice on the notion of State aid.

notably be ensured by limiting the public funding to the net cost (including the cost of capital) of the non-economic activities, to be identified on the basis of a clear separation of accounts.<sup>10</sup>

16. When the building is used for non-economic activities, the integration of renewable electricity or heat generation and related storage on-site the building will also remain non-economic (and thus out of the scope of State aid rules) provided that:
- the installation (both renewable electricity or heat generation and storage) is used for self-consumption only (with the possibility to sell up to maximum 20% of the production to the grid or a third party)<sup>11</sup>, and
  - the capacity of the installation has been dimensioned for self-consumption.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Reform 2: National plan for energy and resource efficiency skills development, and a certification scheme for professionals:** *to address the challenge of not having enough and sufficiently trained worker to plan, implement and certify measures linked to energy and resource efficiency, life cycle performance and circularity across buildings, a national plan for relevant energy and resource skills development, including a certification scheme for professionals, will be set up. [...] Initiatives to develop the skills and/or certify individuals (e.g., through vocational training) are in general not caught by State Aid rules.*

**Investment 1: Energy and resource efficiency scheme for public buildings, health and social infrastructures based on comprehensive energy performance contracts:** *To address the challenge of high upfront costs and going beyond Article 5 of the Energy Efficiency Directive, an energy and resource efficiency scheme for public buildings, health and social infrastructures will be set up, based on comprehensive energy performance contracts.*

#### B. No State resources

17. Measures that do not involve the transfer of public resources<sup>12</sup> exclude the existence of State aid<sup>13</sup>.

<sup>10</sup> See by analogy paragraph 206 of the Notice on the notion of State aid.

<sup>11</sup> See by analogy paragraph 207 of the Notice on the notion of State aid.

<sup>12</sup> The concept of ‘transfer of public resources’ can take many forms such as direct grants, loans, guarantees, direct investment in the capital of undertakings 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. Note that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

<sup>13</sup> The proposal for a Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility (COM/2020/408 final) does not exclude the possibility for Member States to channel part of their non-repayable contribution from the RRF through the Renewable Energy Financing Mechanism (Commission Implementing Regulation (EU) 2020/1294 of 15 September 2020 on the Union renewable energy financing mechanism. OJ L 303, 17.9.2020, p. 1, ‘REFM’), established under the Governance Regulation. Moreover, the Guidance to Member States on recovery and resilience plans explicitly refers to this possibility (SWD (2020) 205 final. 17.9.2020, see page 14). If a Member State uses (part of) its non-repayable contribution to make an unconditional payment to the REFM, the amount paid enters the Union budget and is allocated by the REFM to specific projects selected by the Commission on the basis of a grant award procedure. Therefore, the Member State does not have control over the disbursement of the funds by the REFM, and the link between the Member State and the selection and allocation of the beneficiary of support is broken. Therefore, the support by the REFM using the funds received from the Member State would no longer be imputable to the State and would not constitute State

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Reform 1: One-stop shops:** *to address administrative barriers in providing permits, certification and to support households and businesses with legal, technical (including energy audits) and financial advice.*

**Reform 4: Supportive legislative package for energy and resource efficiency in buildings:** *To further incentivise energy efficiency measures in residential, commercial and public buildings, and social infrastructures with a particular focus on multi-apartment buildings, the national government will introduce revisions to the building legislation.*

### C. No selectivity

18. 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.
19. This can be the case, for example, of a general reform of a tax or of the social security contributions. Selectivity is normally assessed by means of a three-step analysis<sup>14</sup>. Reductions or exemptions from taxes or social security contributions can fall outside State aid rules when they apply in the same way to all undertakings that are in a comparable factual and legal situation in the light of the inherent objective of the tax or social security system.
20. Selectivity can also stem from the discretion of the administration in the implementation of a scheme, in particular when fulfilling objective criteria do not automatically result in eligibility for the measure.
21. In the case of State aid to an individual undertaking, the finding of an economic advantage allows to presume selectivity.
22. As regards support schemes for the improvement of the energy efficiency of buildings, the scheme could be of a general nature as regards the direct recipients of such support if it fulfils the following cumulative conditions:
  - Any building owner and/or tenant is eligible for the scheme.
  - The eligibility conditions for the support are open, transparent, objective and non-discriminatory and linked to the improvement of the energy efficiency of buildings. The eligibility for support is based on the same conditions for all potential beneficiaries: no bonuses or less stringent conditions are foreseen for certain types of undertakings or certain sectors or beneficiaries located in certain regions. Finally, the eligibility criteria and definition of eligible costs should not lead to *de facto* favouring certain sectors or types of undertakings.
  - The support may not be subject to the use of a specific technology, of the products or services of specific undertakings or of domestic products/services.
  - The budget allocated to the scheme is such that the scheme is open and support is accessible to all.

---

aid. As a consequence, the contributions to projects that are financed through the REFM would not be subject to State aid rules.

<sup>14</sup> Notice on the notion of State aid, section 5.2.3.

#### *D. No advantage*

23. In exceptional circumstances, where the market cannot deliver the service in a satisfactory manner and under conditions (such as price, objective quality characteristics, continuity and access to the service) that are consistent with the public interest, the Member States may decide to compensate the service provider within the framework of a clearly defined and entrusted, genuine Service of General Economic Interest (SGEI).
24. SGEIs are often observed in the areas of social housing, education, healthcare, etc. Support provided to improve the energy efficiency or energy performance of the building used to carry out the SGEI could fall under the costs eligible for an SGEI compensation.
25. In such cases, the existence of an economic advantage at the level of the building owner or the tenant may be excluded if: (i) the building is necessary for the provision of services that can be considered as genuine SGEI for which public service obligations have been clearly defined; (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; and (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 undertaking would require<sup>15</sup>.
26. In addition, public funding granted for the provision of a SGEI not exceeding EUR 500.000 over three years is not regarded as State aid, provided the other conditions of the SGEI *de minimis* Regulation are also fulfilled.
27. It should be noted that the above only applies for the operator carrying out the SGEI. It does not apply for instance to support provided to financial intermediaries which on their turn might grant a loan to an SGEI provider. In addition, the building must be exclusively used for carrying out the SGEI. In case of the installation of renewable electricity or heat generation, the energy must be only used for self-consumption.

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

##### *a. De minimis aid*

28. The distortion of competition and effect on trade can be excluded in cases of very limited amounts of aid (“*de minimis* aid”). *De minimis* aid is not considered State aid, and therefore there is no need for prior approval from the Commission. Member States do not even have to inform the Commission of such aid.
29. Aid is considered to be *de minimis* if the total amount of aid granted per Member State to a single undertaking does not exceed EUR 200,000 over any period of three fiscal years and the other conditions laid down in the *de minimis* Regulation are respected<sup>16</sup>. Notably, the aid must be “transparent” within the meaning of Article 4 of the *de minimis* Regulation (i.e. it must be possible to calculate precisely the gross grant

---

<sup>15</sup> Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*.

<sup>16</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 L352, 24.12.2013, p. 1.

equivalent of the aid *ex ante* without a risk assessment), the EUR 200,000 threshold must be respected in case of cumulation with any other public support granted to the same beneficiaries under the *de minimis* Regulation, and the cumulation rules set out in the *de minimis* Regulation must be complied with.

*b. No potential effect on trade: purely local impact*

30. There may be instances 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 support is granted directly to the final beneficiary (owner or tenant) and the final beneficiary uses the building to supply 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 (i.e. if it is unlikely to have a material bearing on the decision of investors to establish an outlet in the relevant region/Member State).
31. Evidence to demonstrate that there is no effect on trade could include data showing that there is only limited use of the infrastructure from outside the Member State and that cross-border investments in the relevant market are minimal or unlikely to be adversely affected.<sup>17</sup> This will not be the case for schemes applying to the entire territory of a Member State.

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

32. If a given investment meets the cumulative conditions of Article 107(1) TFEU and thus entails State aid, 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)*

33. 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.
34. 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>18</sup>.

---

<sup>17</sup> See paragraph 197 of the Notice on the notion of State aid. For instance a subsidy from the local municipality to the local sport facilities to insulate the buildings where the sport activities are taking place and which predominantly serve the local audience – see in particular paragraph 197(a) of the Notice on the notion of State aid.

<sup>18</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.

35. 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>19</sup>.

*B. General Block Exemption Regulation (GBER)<sup>20</sup>*

36. If State aid falls under the GBER, Member States do not have to notify such State aid. They only have to inform the Commission thereof.

37. Measures to support energy-efficiency in buildings are exempted from notification if granted in compliance with the conditions of the GBER, in particular, Articles 38 (investment aid for energy efficiency measures) and 39 (investment aid for energy efficiency projects in buildings).

38. **Article 38 GBER** allows investment aid up to EUR 15 million per undertaking per project for energy efficiency investments, including energy efficiency improvements in buildings.

39. Under this provision, the eligible costs<sup>21</sup> shall respectively be the extra investment costs necessary to achieve the higher level of energy efficiency, compared to the situation without the aid. More precisely, Article 38 GBER distinguishes between two situations for the determination of the eligible costs:

- a) where the costs of achieving the energy efficiency objective can be identified in the total investment costs as a separate investment, for instance, because the energy-efficiency improvements is a readily identifiable ‘add-on component’ to a pre-existing facility, the costs of the separate investment constitute the eligible costs. For example, in the case of renovation of a building, the addition of an insulation layer on the building; the addition of temperature-regulating devices, etc.
- b) in all other cases, the eligible costs are the extra investment costs established by comparing the aided investment with the counterfactual situation in the absence of State aid, i.e. with a similar, less energy efficient investment that would credibly have been carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitute the eligible costs.

For example, in the case of new buildings the costs of the building that would be constructed without support for enhancing the energy efficiency should be deducted.

In the case of equipment, the counterfactual correspond to the standard equipment that would be purchased without aid for energy efficiency. The eligible costs correspond to the difference between the standard and the more energy efficient equipment.

40. The basic aid intensity is 30% and can be increased further by 20 percentage points and 10 percentage points if the beneficiary is a small or medium sized enterprise

---

<sup>19</sup> As currently proposed in the Council Presidency compromise proposal of 7 October 2020.

<sup>20</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.

<sup>21</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.



respectively and by a further 15 percentage points or 5 percentage points for investments located in assisted areas (Article 107(3)(a)-regions and Article 107(3)(c)-regions respectively).

41. No aid may be granted to comply with applicable Union standards.
42. **Article 39 GBER** can also apply to energy efficiency in buildings but only in so far as the aid is granted through a financial intermediary. In that scenario, the aid is granted in the form of an endowment, equity, a guarantee or a loan to an energy efficiency fund or other financial intermediary, which passes the aid to the final beneficiary (building owners or tenants) in the form of cheaper loans or guarantees. The nominal value of the loan or the amount guarantee shall not exceed EUR 10 million per project at the level of the final beneficiary. Article 39 GBER establishes further conditions applying to the financial intermediary. Article 39 GBER only applies to energy efficiency improvement investments in buildings but not to the installation of renewable energy generation.
43. It should be noted that if the grant or the cheaper loan or guarantee is not provided to the building owner or tenant as the final beneficiary but the energy service company, such support is not covered by Article 38 GBER. Also, it is not covered by Article 39 GBER either, unless the energy service company operates also as financial intermediary and complies with the conditions for financial intermediaries under Article 39 GBER.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Investment 2: Home renovation support scheme to increase the energy and resource efficiency of residential buildings and social housing:** *To address the challenge of high upfront costs of building renovation and the perceived long payback periods, the government will introduce a home renovation scheme. In case the loan guarantee involve undertakings (e.g. landlords, financial intermediaries or energy suppliers) or concern buildings in which economic activities are taking place, compliance with State Aid will be verified before the scheme enters into force. Such State Aid could be compatible under the General Block Exemption Regulation (namely art. 38,39and/or 41) or alternatively under the Environmental and Energy Aid Guidelines (EEAG) for larger schemes.*

### C. Service of General Economic Interest: SGEI Decision<sup>22</sup>

44. Social housing, public healthcare etc. can be subject to public service obligations. If the building is necessary for the provision of public services entrusted as an SGEI, support to improve the energy efficiency or energy performance of the building may be considered as part of the SGEI mission.
45. State aid for the compensation of such an SGEI up to EUR 15 million per year<sup>23</sup> (on average over the whole duration of the entrustment), 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 the SGEI, parameters of compensation established ex ante in a transparent manner, amount of compensation not exceeding the

<sup>22</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.

<sup>23</sup> With the exception of SGEIs for healthcare, long-term care and childcare and social housing.

costs for the provision of the SGEI and a reasonable profit, and a mechanism to ensure the absence of overcompensation.

46. It should be noted that the above applies only for the operator carrying out the SGEI. It does not apply for instance to support provided to financial intermediaries which on their turn might grant a loan to an SGEI provider. In addition, the building must be exclusively used for carrying out the SGEI. In case of the installation of renewable electricity or heat generation, the energy must be only used for self-consumption. When the building is used also for other purposes or if the energy generated is also sold to third parties, specific rules apply (separate accounts and specific limitations, see for instance Article 5(9) of the SGEI Decision).

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Investment 2: Home renovation support scheme to increase the energy and resource efficiency of social housing:** *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), State aid for the compensation of such SGEI can be exempted from notification on the basis of the SGEI Decision, provided that the criteria of that Decision are met.*

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

47. 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 and relevant 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

48. 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.
49. For measures that must be notified, 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 by the Member States are encouraged as soon as possible.
50. The Commission aims to complete the assessment of notified State aid measures within six weeks of receiving complete notification from Member States.

### B. Relevant legal bases for compatibility with the Treaty

51. For support exceeding EUR 15 million or for operating aid or for support exceeding the aid intensities foreseen in the GBER, a notification to the Commission is needed.
52. 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.

53. To assess whether State aid for 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). For support to improve the energy efficiency of buildings, such analysis will be done under section 3.4 of the Energy and Environmental Aid Guidelines (EEAG)<sup>24</sup>.
54. 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 cannot 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 further ensure that the distortive effects of the aid are as far as possible limited.
  - The Commission will assess the remaining negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States against the common interest of the Union. 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.
55. For energy-efficiency support schemes for buildings, the Commission will assess the scheme under section 3.4 of the EEAG. It will in particular examine:
- a) The amount of energy saved due to better, lower energy performance or the efficiency gains by reduced energy consumption.
  - b) Whether the aid brings about a material improvement that the market alone cannot deliver. In this respect, the Commission is aware that energy efficiency in buildings can face additional market failures in that the benefits of energy efficiency measures do not necessarily accrue with the building owner who generally bears the renovation costs, but with the tenant.
  - c) Whether the aid is an appropriate instrument to achieve energy efficiency improvements. The Commission has in this connection already recognised that

---

<sup>24</sup> Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

financial instruments might be an appropriate instrument for the granting of aid for the energy-efficient renovation of buildings<sup>25</sup>.

- d) Whether the aid has an incentive effect, change the beneficiary's behaviour in such a way that it engages in an activity which it would not carry out (or not to the same extent) without the aid. Aid granted to adapt to future Union standards has in principle an incentive effect, including when the standard has already been adopted but is not yet in force. In the latter case, aid has an incentive effect if it incentivises the realisation of the investment at least one year before the standard enters into force. The services of DG Competition consider in this respect that the fact that the Energy Efficiency Directive puts an obligation on Member States to achieve targets in energy-efficient renovation of buildings and in final energy consumption does not prevent an aid in the field of energy-efficiency from having an incentive effect.
- e) When assessing the proportionality of the aid, the Commission verifies that the aid amount per beneficiary is limited to the minimum needed to achieve the objective of the measure to which the aid is targeted. Measures that are not subject to an individual assessment are deemed proportionate if:
  - a. For investment aid:
    - i. The aid amount does not exceed 30% of the eligible costs. This maximum aid intensity can be increased further by 20 percentage points and 10 percentage points if the beneficiary is a small or medium sized enterprise respectively and by a further 15 percentage points or 5 percentage points for investments located in assisted areas (Article 107(3)(a)-regions and Article 107(3)(c)-regions respectively). Where aid to the beneficiary is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid amount may reach 100 % of the eligible costs.
    - ii. The eligible costs for environmental aid are the extra investment costs in tangible and/or in intangible assets which are directly linked to the achievement of a higher energy-efficiency.
    - iii. The eligible costs are determined as follows:
      - Where the costs of achieving a higher energy-efficiency can be identified in the total investment costs as a separate investment, for instance, because the green element is a readily identifiable 'add-on component' to a pre-existing facility, the costs of the separate investment constitute the eligible costs. For example, in the case of renovation of a building, the addition of an insulation layer on the building; the addition of temperature-regulating devices.
      - In all other cases, the eligible costs are the extra investment costs established by comparing the aided investment with the counterfactual situation in the absence of State aid. In principle, reference can be made to the cost of a similar, less energy efficient investment that would credibly be realised without the aid and which does not achieve higher energy efficiency. For example, in

---

<sup>25</sup> Point 147 of the EEAG.

the case of new buildings the costs of the building that would be constructed without support for enhancing the energy efficiency should be deducted.

In the case of equipment, the counterfactual correspond to the standard equipment that would be purchased without aid for energy efficiency. The eligible costs correspond to the difference between the standard and the more energy efficient equipment.

Annex 2 to the EEAG contains a list of the relevant counterfactual scenarios or eligible cost calculations reflecting the counterfactual scenario that should be used in similar cases.

The Commission may accept alternative counterfactual situations if duly justified by the Member State. For example, in case of replacement of exiting equipment, account could also be taken of the remaining lifetime of the equipment that is being replaced.

- iv. Investment aid for energy efficiency in buildings granted on the basis of an aid scheme remains subject to individual notification if the investment aid exceeds EUR 15 million per undertaking. The Commission will verify the incentive effect, the proportionality and the impact on competition at the level of the concrete aided project. When the aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the individual aid does not need to be notified even if it exceeds EUR 15 million, provided that the underlying scheme has been approved as compatible aid.
- b. For operating aid:
  - i. The aid is limited to compensating for net extra production costs (net of any aid but inclusive of a normal level of profit) resulting from the investment, taking account of benefits resulting from energy saving. In determining the amount of operating aid, any investment aid granted to the undertaking in question in respect of the energy efficiency investment must be deducted from production costs. The aid is limited to a five year duration.
- f) The aid should not have an undue negative effect on competition and trade. The aid needs to operate in a fair, open and transparent way<sup>26</sup>.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Investment 2: Home renovation support scheme to increase the energy and resource efficiency of residential buildings and social housing:** *To address the challenge of high upfront costs of building renovation and the perceived long payback periods, the government will introduce a home renovation scheme. In case the loan guarantee involve undertakings (e.g. landlords, financial intermediaries or energy suppliers) or concern buildings in which economic activities are taking place, compliance with State Aid will be verified before the scheme enters into force. Such State Aid could be compatible under the [GBER] (namely art. 38,39and/or 41) or alternatively under the Environmental and Energy Aid Guidelines (EEAG) for larger schemes.*

<sup>26</sup> The existence of a competitive bidding process may contribute to the conclusion that the effects of the measure on competition and trade are limited.

## 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.
- Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.
- Communication from the Commission — Guidelines on State aid to promote risk finance investments. OJ C 19, 22.1.2014, p. 4.
- 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.
- Communication from the Commission - A Renovation Wave for Europe - greening our buildings, creating jobs, improving lives, COM(2020) 662 final.