

## RECOVERY AND RESILIENCE FACILITY – STATE AID

**Guiding template: Other low emission transport modes – rail and inland waterway (rail infrastructure, transshipment terminals, rail maintenance workshops, acquisition / retrofitting of rail rolling stock and acquisition/retrofitting of inland waterway fleet) and short-sea shipping (aid for the launching of short-sea shipping services)**

***Link to European Flagship: Recharge & Refuel***

*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

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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.

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:
  - 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. The COVID-19 pandemic has brought about a significant and unexpected decline in demand for transport services, including low emission transport modes, which are the backbone of sustainable mobility and are essential to economic recovery. In order to counteract the negative economic effects of the outbreak some of the most impacted sectors may need public support. Depending on the specific circumstances of each Member State, transport operators and infrastructure managers may fall under this category. Moreover, a Member State may decide to use resources from the Facility to provide public support to these sectors. For instance, they could offer financial support for targeted public investments and reforms that make Member States economies more resilient and better prepared for the future.
9. In order to benefit from the Facility, Member States’ national investment and reform agendas should be in line with the EU policy criteria outlined in the regulation establishing the Facility, currently in the final phase of inter-institutional negotiations. Building on this, the Commission’s Annual Sustainable Growth Strategy (ASGS) for 2021 also sets out strategic guidance for the implementation of the Facility. In that context, the Commission has strongly encouraged Member States to focus on investments and reform in the seven flagship areas identified in the ASGS, including the promotion of future-proof clean technologies to accelerate the use of sustainable, accessible and smart transport, charging and refuelling stations and extension of public transport (flagship “*Recharge and Refuel*”).<sup>4</sup>
10. A well-functioning rail and inland waterway transport system is key to achieving the objectives of the European Green Deal, which calls *inter alia* for a 90% reduction in transport emissions by 2050<sup>5</sup>. The range of investments that Member States may

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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-clean-smart-and-fair-urban-mobility\\_en](https://ec.europa.eu/info/files/example-component-reforms-and-investments-clean-smart-and-fair-urban-mobility_en).

<sup>5</sup> COM(2019) 640 final, 11.12.2019, page 10.

consider to support low emission transport modes goes from investments in new or existing fleet to investments in rail infrastructure, transshipment terminals and maintenance workshops, also with a view to stimulating demand for zero emission fleet and for digital solutions that enable interoperability across transport modes and within sectors. By way of example, such investments may support:

- The acquisition / retrofitting of existing rolling stock by the incorporation of technologies (e.g. braking systems) that will reduce noise pollution;
- The acquisition / retrofitting of vessels for inland waterway transport powered by alternative fuel sources, promoting advanced engine/propulsion solutions and solutions improving energy efficiency (battery/hybrid powered vessels);
- The roll-out of recharging and refuelling publicly accessible rail / inland port / maritime port infrastructure for sustainable alternative fuels (e.g. on shore power system and bunkering infrastructure in inland and maritime ports);
- The construction / expansion of transshipments infrastructures and superstructures to allow for better multimodal transport and mobility, seamless integration of the transport modes and changes in transport patterns, such as multimodal freight and passenger terminals.

### 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 prior to its implementation.

#### A. *No economic activity*

12. Aid for activities that are not of an economic nature, i.e. that are not used for offering goods or services on the market, would not be considered State aid.
13. In the specific case of **railway infrastructure / inland port projects**, if the infrastructure is not meant to be commercially exploited<sup>6</sup>, its funding is in principle excluded from the application of State aid rules. This concerns for instance rail infrastructure that is used for activities that the State normally performs in the exercise of its public powers (e.g. infrastructure for safety, security, police or customs activities) or that is not used for offering goods or services on a market.<sup>7</sup>
14. If railway / inland port infrastructure is used for both economic and non-economic activities (for example, customs areas in intermodal platforms, which are typically

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<sup>6</sup> Such as railway infrastructure within the meaning of Annex I to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast), JO L 343, 14.12.2012, p. 32.

<sup>7</sup> See Part II, point 3 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure”: [https://ec.europa.eu/competition/state\\_aid/modernisation/grid\\_rail\\_metro\\_en.pdf](https://ec.europa.eu/competition/state_aid/modernisation/grid_rail_metro_en.pdf).

infrastructures used to perform an economic activity),<sup>8</sup> public funding for its construction will fall under the State aid rules only insofar as it covers the costs linked to the economic activities in question.<sup>9</sup>

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

**Reform 1: Create the framework for cities/agglomerations to adopt and implement individual Sustainable Urban Mobility Plans (SUMP):** *Drawing up SUMPs should not as such raise State aid concerns. If in the context of the financial framework for the implementation of SUMPs, it appears that support may be granted to undertakings performing economic activity, which could constitute a selective advantage, then the SUMP will take into consideration State aid rules. [...]*

### B. No State resources

15. Measures that do not involve the transfer of public resources exclude the existence of State aid<sup>10</sup>.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

**Reform 4: Simplify and harmonize permitting procedures for alternative fuels infrastructure:** *Measures to make permit procedures leaner and quicker and to ensure transparency of the network data do not normally involve State resources and therefore do not fall under State aid rules. Access to data will be provided in principle on an open access basis and without favouring any particular undertaking thereby excluding any potential competition/ state aid concerns. [...]*

### C. No selectivity

16. 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.
17. This can be the case, for example, of a general reform of a tax or of the social security contributions under certain conditions. However, this possibility appears difficult to conceive for the investments at stake, as support under this guiding template would typically be based on measures, either *ad hoc* or based on a scheme, which typically select certain types of beneficiaries

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<sup>8</sup> This is typically the case of the facilities used to provide the essential services to railway undertakings that are listed in point 2 of Annex II to Directive 2012/34/EU (so called “essential facilities”, such as freight terminals, marshalling yards, storage sidings, maintenance facilities, inland port facilities linked to rail activities).

<sup>9</sup> See Part II, point 4 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure”: [https://ec.europa.eu/competition/state\\_aid/modernisation/grid\\_rail\\_metro\\_en.pdf](https://ec.europa.eu/competition/state_aid/modernisation/grid_rail_metro_en.pdf).

<sup>10</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. Note however that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

*D. No advantage*

18. An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit that an undertaking could not have obtained under normal market conditions.
19. An economic benefit would not amount to State aid when the State acts under normal market conditions, i.e. under the same terms and conditions as a private operator in a comparable situation (so-called Market Economy Operator test – MEO test).<sup>11</sup>
20. Compliance with market conditions can be established directly:
  - When there is proof of significant *pari passu* investments by public entities and private operators, and/or
  - When the beneficiary was selected through a competitive, transparent, non-discriminatory and unconditional tender in line with the principles of the TFEU on public procurement.<sup>12</sup>
21. Compliance with market conditions can be also established indirectly:
  - Through benchmarking with comparable transactions carried out by comparable private operators in comparable situations, and/or
  - On the basis of an *ex-ante* sound business plan (preferably validated by external experts) demonstrating that the investment provides an adequate return for the investor(s) in line with what a market economy investor would require.
22. In the specific case of **railway / inland port / combined transport**<sup>13</sup> **infrastructure projects**, when assessing the presence of State aid at the level of the owner/developer of the infrastructure, the MEO test is difficult to be met. In fact, the financing of railway infrastructure often requires substantial capital investments that in some cases can only be recovered in the very long term and would therefore typically not be undertaken on the basis of purely economic considerations.<sup>14</sup>
23. When assessing the presence of State aid at the level of the operator/concessionaire of the infrastructure including essential facilities, the MEO test requires:
  - that the operation of the infrastructure is assigned for a positive price to an operator/concessionaire on the basis of a competitive, transparent, non-discriminatory and unconditional tender,<sup>15</sup> or
  - the proof that the fees paid by the operator/concessionaire for the right to exploit the infrastructure are in line with normal market conditions through (i)

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<sup>11</sup> See section 4.2 of the Notice on the notion of State aid.

<sup>12</sup> See paragraph 89 *ff* of the Notice on the notion of State aid.

<sup>13</sup> Combined transport services are intermodal transport services, which concern the movement of goods (in one and the same loading unit or a vehicle) by successive modes of transport without handling of the goods themselves when changing modes.

<sup>14</sup> See Part II, point 6 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure”.

<sup>15</sup> See Part II, point 7.1 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure” and points 91-96 of the Notice on the notion of State aid.

benchmarking with comparable situations, or (ii) on the basis of an ex-ante sound business plan.<sup>16</sup>

24. When the construction and operation of infrastructure are bundled, the Commission considers that the financing of such bundled operations does not provide any economic advantage at the level of the operator/concessionaire if both the construction and operation are tendered out together.<sup>17</sup>
25. When assessing the presence of State aid at the level of the users of the infrastructure, the Commission considers that the transport operators using the infrastructure do not receive any advantage if certain conditions are satisfied. Notably, where (i) the use of the infrastructure is open to all potential users in a fair and non-discriminatory manner, and (ii) access to that infrastructure is charged for at a rate in accordance with Union legislation.<sup>18</sup>
26. In addition, when public funding concerns the provision of services that can be considered as genuine **services of general economic interest (SGEI)**, it does not entail an advantage within the meaning of Article 107(1) TFEU if the four cumulative conditions set out by the *Altmark* judgment<sup>19</sup> of the Court of Justice are complied with.
27. In the specific case of **infrastructure projects**, the above means that the operator/concessionaire of the infrastructure does not receive any advantage if:
  - the infrastructure project is necessary for the provision of services that can be considered as genuine SGEI for which the public service obligations have been clearly defined; and
  - the parameters of compensation have been established in advance in an objective and transparent manner; and
  - there is no compensation paid beyond the net costs of providing the public service and a reasonable profit; and

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<sup>16</sup> See Part II, point 7.1 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure”.

<sup>17</sup> See Part II, point 7.1 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure” and the corresponding principles reported in the Notice on the notion of State aid.

<sup>18</sup> See Part II, point 8 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure” and point 25 of the “Community guidelines on State aid for railway undertakings”.

<sup>19</sup> Judgment of the Court of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, C-280/00, EU:C:2003:415, par. 88 to 93. In that judgment, the Court of Justice held that public service compensation does not constitute State aid within the meaning of Article 107 TFEU provided that four cumulative criteria are met. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Third, the compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. Finally, where the undertaking that is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs that a typical undertaking, well-run and adequately provided with the relevant means, would have incurred.

- 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.<sup>20</sup>
28. In order not to qualify as State aid, public service contract for **rail or inland waterway transport services** need to satisfy the four *Altmark* conditions, including the definition of a public service obligation, the ex-ante establishment of the cost parameters, the absence of overcompensation and compliance with public procurement rules. In particular, the award of a public service contract for rail or inland waterway transport needs to comply with the public procurement Directives<sup>21</sup> or with the Directive on the award of concession contracts.<sup>22</sup>
29. It is up to the Member States to self-assess whether the planned measure would comply with the *Altmark* conditions and, thus, not constitute State aid.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

**Reform 3: Simplify and harmonize permitting procedures for alternative fuels infrastructure:** *State aid rules are no hurdle to public service contracts including sustainable mobility services. However, if a running public service contract needs to be amended as a result of this initiative, local authorities will take into consideration the applicable EU framework. [...]*

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

30. The effect on trade between Member States for the purposes of Article 107(1) TFEU must be established on a case-by-case basis, apart from cases covered by block exemption regulations, such as Regulation No 1370/2007<sup>23</sup> or the *de minimis* Regulation.<sup>24</sup> For such cases, there is no need for prior notification and approval from the Commission.
31. In the specific case of **infrastructure projects**, the Commission considers that:
- public funding of the construction of railway / inland port / combined transport infrastructure does not affect trade between Member States and does not distort competition, if the infrastructure is made available to potential users on equal

<sup>20</sup> See Part II, point 7.2 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure” and the corresponding principles reported in the Notice on the notion of State aid.

<sup>21</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014.

<sup>22</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014.

<sup>23</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p.1.

<sup>24</sup> In general, support granted under the *de minimis* Regulation is not regarded as State aid if no more than EUR 200 000 is granted to a single undertaking over a period of three years and the other conditions laid down in the *de minimis* Regulation are also respected. See 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.

and non-discriminatory terms and the funding is not used to cross-subsidize or indirectly subsidize other economic activities, including the operation of the infrastructure.<sup>25</sup> That reasoning applies to investments in infrastructure such as bridges and tunnels;

- public funding of the operation of railway infrastructures does not affect trade between Member States and does not distort competition, if the operation of the infrastructure is subject to a legal monopoly that not only excludes competition on the market, but also for the market, in that it excludes any possible competition to become the exclusive provider of the service in question.<sup>26</sup>

32. When the construction and operation of railway / inland port / combined transport infrastructure are bundled, the Commission considers that the financing of such bundled operations does not distort competition if the operation of the infrastructure is subject to a legal monopoly.<sup>27</sup>

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

33. 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 that can be granted without notification in the following instances:

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

34. 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.

35. 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>28</sup>.

36. 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>29</sup>.

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<sup>25</sup> See paragraphs 211-212 and 219 of the Notice on the notion of State aid.

<sup>26</sup> If the service provider is active in another (geographical or product) market that is open to competition, cross-subsidisation has to be excluded. This requires that separate accounts are used, costs and revenues are allocated in an appropriate way and public funding provided for the service subject to the legal monopoly cannot benefit other activities.

<sup>27</sup> See Part II, point 2 of the “Infrastructure analytical grid for railway, metro and local transport infrastructure” and the corresponding principles reported in the Notice on the notion of State aid.

<sup>28</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>29</sup> As currently proposed in the Council Presidency compromise proposal of 7 October 2020.

*B. General Block Exemption Regulation (GBER)<sup>30</sup>*

37. 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.
38. A measure is exempted from notification if it is granted in compliance with the conditions of Article 56 or Articles 36 to 38 GBER. The provisions of Chapter I of the GBER must also be complied with.
39. Investment aid for local infrastructures in the land and inland waterway transport sector up to EUR 10 million of aid or total costs not exceeding EUR 20 million can be block exempted under **Article 56 GBER**. In particular, (i) the infrastructure must be available to interested users at market price and on an open, transparent and non-discriminatory basis; (ii) any concession to operate the infrastructure must be assigned through an open, transparent and non-discriminatory procedure; and (iii) at the level of the owner, only the difference between the eligible costs<sup>31</sup> and the operating profit of the investment can be financed. Dedicated infrastructure cannot be block-exempted under Article 56 GBER.
40. Investment aid for inland ports up to EUR 40 million per project (or EUR 50 million per project in an inland port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013) can be block exempted under **Article 56c GBER**. Member States may finance up to 100% of the costs for dredging and for the construction, replacement or upgrade of port infrastructure and/or access infrastructure, within the limit of the funding gap of the investment or dredging. In the alternative, for aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs irrespective of the funding gap. In any event (i) the aided port infrastructure must be available to interested users on an equal and non-discriminatory basis on market terms; (ii) any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
41. Investment in the modernisation of rail rolling stock / inland waterway fleet can be block exempted under the GBER if it enables undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards (**Article 36 GBER**), to adapt early to future Union standards (**Article 37 GBER**), or if it concerns energy efficiency measures (**Article 38 GBER**).
42. **Article 36 GBER** allows for investment aid up to EUR 15 million per undertaking per project that increases levels of environmental protection beyond Union standards. Aid for the purchase of more environmentally friendly transport vehicles that comply with future Union standards that have been adopted but are not yet in force is also permitted, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date. The eligible costs shall be the extra investment costs compared to the costs of a reference (less environmentally friendly) investment that would credibly be carried out without the

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<sup>30</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>31</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.

aid (thus supporting the purchase of a locomotive or electrical multiple unit “EMU” or vessel equipped with batteries, hybrid electric, or hydrogen/Fuel cells, instead of a diesel or a petrol locomotive/vessel). In the case of retrofitting of rolling stock/vessels or cleaner technologies (as those mentioned above), all relevant extra investment costs can be considered as eligible. The aid intensity may not exceed 40% of the eligible costs and can be increased further by 20% and 10% if the beneficiary is a small or medium sized enterprise respectively; and by 15% and 5% for investments located in assisted areas fulfilling the conditions of Articles 107(3)(a) and 107(3)(c) TFEU respectively.

43. **Article 37 GBER** allows for investment aid to support undertakings that comply early with future Union environmental standards. The eligible costs are the extra investment costs necessary to go beyond the applicable Union standards. The maximum aid intensity is as follows:
- 20% of the eligible costs for small undertakings, 15% of the eligible costs for medium-sized undertakings and 10% of the eligible costs for large undertakings if the implementation and finalisation of the investment take place more than three years before the date of entry into force of the new Union standard;
  - 15% of the eligible costs for small undertakings, 10% of the eligible costs for medium-sized undertakings and 5% of the eligible costs for large undertakings if the implementation and finalisation of the investment take place between one and three years before the date of entry into force of the new Union standard;
  - This aid intensity can be increased by 15% and 5% for investments located in assisted areas fulfilling the conditions of Articles 107(3)(a) and 107(3)(c) TFEU respectively.
44. **Article 38 GBER** allows for investment aid of up to EUR 15 million for projects that increase energy efficiency and thereby reduce directly or indirectly GHG emissions. The eligible costs are the extra costs necessary to achieve the higher level of energy efficiency and the maximum aid intensity is 30% of the eligible costs. That aid intensity can be increased by 20% and 10% for small or medium companies respectively; and by 15% and 5% for investments located in assisted areas fulfilling the conditions of Articles 107(3)(a) and 107(3)(c) TFEU respectively.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

**Investment 1: Create a subsidy scheme to allow cities/agglomerations to procure smart, safe and clean public transport fleets, and their related infrastructure, as well as publicly accessible recharging/refuelling points for private and commercial zero and low emissions vehicles:** *In case State aid would be present, local managing authorities have several tools at their disposal to ensure compatibility of the aid. First and foremost, local managing authorities can apply the General Block Exemption Regulation (GBER) to increase the share of clean - either new or retrofitted - vehicles (in particular the provisions on investment aid for environmental protection) if the GBER requirements are met, the measure does not require prior notification to the Commission and can be immediately implemented. If the GBER conditions cannot be met, local managing authorities should notify the aid under the EEAG for approval. [...]*

### C. Services of General Economic Interest

45. In the case of public passenger transport services by rail and by road, compensation for those services is deemed compatible with the internal market and is exempt from prior notification if it fulfils the conditions laid down in Regulation No 1370/2007.
46. Regulation No 1370/2007, which implements Article 93 TFEU, lays down the rules applicable to public service compensation in the land transport sector. The main conditions of Regulation No 1370/2007 are a clear definition of the public service obligation, clear rules setting out the compensations for the public service provided and the prevention of overcompensation (i.e. the entity providing the transport service can only be paid the difference between the costs and revenues stemming from the public service obligation, plus a reasonable profit). Until 24 December 2023, with regard to transport by rail, with the exception of other track-based modes such as metro or tramways, competent authorities may decide to make direct awards of public service contracts where this is not prohibited by national law. In this case, however, the detailed rules on compensation set out in the Annex to Regulation No 1370/2007 will also apply. By contrast, there is no need to apply the Annex in the case of open, transparent and non-discriminatory competitive tendering procedure within the meaning of Article 5(3) of Regulation No 1370/2007.
47. Regulation No 1370/2007 principally applies to the provision of national and international public passenger transport services by rail, by other track-based modes and by road. Its application to inland waterway public passenger traffic is at the discretion of the Member States.
48. Member States should note that rail freight transport services are not covered by Regulation No 1370/2007.
49. There may be instances where the construction and maintenance of the infrastructure necessary for the provision of public transport services (passengers and/or freight) is part of public transport obligations. In those cases, the principles of compensation set out in points 46 and 47 apply to the costs related to those investments.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

**Reform 3: Simplify and harmonize permitting procedures for alternative fuels infrastructure:** *State aid rules are no hurdle to public service contracts including sustainable mobility services. However, if a running public service contract needs to be amended as a result of this initiative, local authorities will take into consideration the applicable EU framework. [...]*

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

50. 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*

51. In case the planned measures 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.
52. 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.
53. 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 with the Treaty*

54. According to Article 93 TFEU, ‘Aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service’.
55. Under Article 93 TFEU, State aid which meets the needs of coordination of transport should, in particular, comply with the following conditions: (i) necessity; (ii) proportionality; (iii) incentive effect of the aid; (iv) avoidance of undue effects on competition and on trade between Member States; and (v) contribution to the development of the transport sector, inasmuch as the aid contributes to the objective of transport coordination.
56. As regards aid representing reimbursement for the discharge of certain obligations inherent in the concept of a public service, under Article 93 TFEU, the Commission verifies whether: (i) the public service is a genuine SGEI; (ii) the SGEI was properly entrusted by one or more acts of a public authority; (iii) the parameters for compensation have been established in advance in an objective and transparent manner; (iv) the amount of compensation did not exceed what was necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit; and (v) the obligations and related compensation do not cause any distortions of competition contrary to the common interest.
57. Against this background, State aid may be considered compatible with the internal market, subject to notification, in the following instances:
  - a. *Investment aid to **infrastructure** (e.g. service facilities / maintenance workshops, combined transport terminals / platforms, private sidings / last mile rail connections)*
58. The compatibility of aid to infrastructure is assessed under Article 93 TFEU if it complies with the general assessment compatibility criteria for the aid to meet the needs of coordination of transport. Under that legal basis, a measure should, in particular, comply with the following conditions (see point 55): (i) necessity; (ii) proportionality; (iii) incentive effect of the aid; (iv) avoidance of undue effects on competition and on trade between Member States; (v) contribution to the development of the transport sector, inasmuch as the aid contributes to the objective of transport coordination; and (vi) open access to all users on a non-discriminatory basis.

*b. Aid for the coordination of transport*

59. While the guidelines on State aid for railway undertakings (“Railway Guidelines”)<sup>32</sup> apply only to railway undertakings, aid for the coordination of transport can be granted also to other operators in the land and inland waterway transport sectors, and in particular to operators of combined transport services directly under Article 93 TFEU, leading to a reduction of GHG emissions. In those cases, the Commission has so far applied by analogy the principles on coordination of transport as outlined in Chapter 6 of the Railway Guidelines.

*i. Operating aid for modal shift of traffic to less polluting modes of transport*<sup>33</sup>

60. Aid for modal shift, i.e. aid for the transfer of traffic from road to less polluting transport modes, can take several forms, including:
- aid for **infrastructure use** in the railway sector, i.e. aid granted to railway undertakings which have to pay charges for the infrastructure they use, while other undertakings providing transport services based on other modes of transport do not have to pay such charges;
  - aid for **reducing external costs**, designed to encourage a modal shift from more polluting to less polluting transport modes, in that the latter generate lower external costs (such as pollution, noise, congestion) than road transport, such as from road to rail or inland waterway or maritime.
61. As regards aid for the **infrastructure use**, there is a presumption of necessity and proportionality if the aid does not exceed 100% of the additional costs for infrastructure use paid by rail transport but not by a more polluting competing transport mode and 30% of the total cost of rail transport.
62. As regards aid for **reducing external costs**, there is a presumption of necessity and proportionality if the aid does not exceed 50% of the part of the external costs which rail transport or inland waterway transport or maritime transport make it possible to avoid compared with the most polluting among the more polluting transport modes and 30% of total cost of rail transport.
63. Aid exceeding the abovementioned thresholds is allowed, provided that Member State demonstrates the necessity and proportionality of the measures in question.
64. Aid measures for modal shift must provide realistic prospects of keeping the traffic transferred to the less polluting modes so that the aid leads to a sustainable transfer of traffic. Where the aid recipient is a railway undertaking, the aid has to be reflected in the price demanded from the passenger or from the shipper, since it is they who make the choice between rail and the more polluting transport modes such as road.

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<sup>32</sup> Communication from the Commission — Community guidelines on State aid for railway undertakings, OJ C 184, 22.7.2008.

<sup>33</sup> See in particular Section 6.3 of the Railway Guidelines.

*ii. Investment aid for promoting interoperability and environmental protection*

65. Aid for promoting interoperability can take several forms, including:
- aid to support investments which can help to remove the technical barriers in the European services market;<sup>34</sup>
  - aid to support investments which promote the digitalisation/automation of transport;
  - aid to support investments which promote greater safety and the reduction of noise pollution and other environmental pollution.
66. Investments for the reduction of noise pollution and other environmental pollution can also contribute to the objective of coordination of transport.
67. There is a presumption of proportionality and necessity if the aid to promote interoperability and the aid to protect the environment does not exceed 50% of the cost of the investments relating to the installation of safety systems and interoperability, or to the reduction of noise and other environmental pollution.
68. Aid exceeding the abovementioned thresholds is allowed, provided that the Member State demonstrates the necessity and proportionality of the measures in question.
69. There is further guidance on uninterrupted 5G coverage along all main transport paths across Europe in the guiding template “*Measures to support the deployment and take-up of fixed and mobile very high capacity networks, including 5G and fibre networks*”.

*iii. Start-up aid for new freight combined transport services*

70. Combined transport services are intermodal transport services<sup>35</sup> where the major part of the journey is by rail, inland waterways or sea and any initial and/or final leg carried out by road are as short as possible.
71. Start-up aid to launch new combined transport services is compatible with Article 93 TFEU if it meets the needs of coordination of transport, namely if the following conditions are met:
- the aid has the purpose of encouraging operators to invest in new combined transport services, which in the absence of the aid would not have started due to the losses generated in the initial phase, for example because the volumes transported are not sufficient and the transport capacity is not fully utilized;
  - the new combined transport services must have credible prospects, supported via ex-ante business plans, of achieving the economic viability without public subsidies;
  - the aid will not exceed the expected operating funding gap based on the ex-ante business plan; it shall be limited in time up to maximum 5 years; and it will

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<sup>34</sup> Such as investments for the deployment of ERTMS (European Rail Traffic Management System) in the rail sector.

<sup>35</sup> Intermodal transport is the movement of goods (in one and the same loading unit or a vehicle) by successive modes of transport without handling of the goods themselves when changing modes.

decrease over time in relation to the expected increase in revenue resulting from the increase in load factors.

72. The Maritime Guidelines<sup>36</sup> allow the granting of start-up aid to ship-owners<sup>37</sup> for the launching of short-sea shipping services between ports in the territory of the Member States. Section 10 of the Maritime Guidelines provides for seven conditions, which must be met for aid for short sea shipping to be deemed compatible with the internal market:

- i. the aid does not exceed three years in duration per project/per line, and with no renewal, extension or repetition of the project in question;
- ii. the service enables transport (of cargo essentially) by road to be carried out wholly or partly by sea, without diverting maritime transport in a way which is contrary to the common interest;
- iii. the aid supports the establishment of a new route or the upgrading of services on an existing one, on the basis of a detailed project with a pre-established environmental impact;
- iv. the aid covers, either up to 30 % of the operational costs of the service in question, or up to 10 % of the cost of the investment to finance the purchase of trans-shipment equipment to supply the planned service;
- v. the aid is granted on the basis of transparent criteria applied in a non-discriminatory way to ship-owners established in the EU and the projects are selected by the authorities of the Member State through a tender procedure in compliance with applicable EU rules;
- vi. the aid supports services that are planned to be commercially viable after the period in which it is eligible for public funding;
- vii. the aid must not be cumulated with public service compensation (obligations or contracts).

*c. Aid for the purchase and modernisation of **rolling stock** and of **inland waterway fleet***

73. Aid for the purchase and modernisation of rolling stock or inland waterway fleet is assessed under Article 93 TFEU, if it concerns measures for the coordination of transport (e.g. general measures for improving the competitiveness of the sector or measures such as adapting an inland waterway fleet to low level waters)<sup>38</sup>.

74. In this context, aid to railway or inland waterway undertakings for the purchase/modernisation of rolling stock or inland waterway fleet may be allowed to the extent it is used:

- a. for the discharge of services covered by a public service contract and provided *inter alia* that:

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<sup>36</sup> Commission Communication C(2004) 43 — Community guidelines on State aid to maritime transport, OJ C 13, 17.1.2004, p. 3.

<sup>37</sup> In respect of ships flying the flag of one of the Member States or the European Economic Area.

<sup>38</sup> Aid for the purchase and renewal of railway rolling stock will be assessed under the rules laid down in Section 3 of the Railway Guidelines, where applicable.

- i. the additional revenue that the replaced / modernised rolling stock/vessel could procure for the aided undertaking is duly taken into account; and
      - ii. the rolling stock/vessel is transferred at market value to competent authorities / to the next operator entrusted with the provision of the SGEI under a new public service contract, net of any aid;
    - b. for the provision of rail / inland waterway transport services not covered by a public service contract, provided that the general assessment criteria for compatibility under Article 93 TFEU are fulfilled.
75. In any event, if the investment aid for the purchase and modernisation of rolling stock or inland waterway fleet is aimed (i) at enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards; or (ii) at encouraging undertakings to comply with future Union standards; or (iii) at enabling undertakings to achieve energy efficiency, it can be block exempted pursuant to the GBER, (i) Article 36 or (ii) Article 37 or (iii) Article 38 respectively (see points 42, 43 and 44 above).

## 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.
- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.
- 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 "Community guidelines on State aid for railway undertakings", OJ C 184, 22.7.2008, p.13.

- 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.
- 2019 Handbook on the external costs of transport.<sup>39</sup>

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<sup>39</sup> Available at [https://ec.europa.eu/transport/themes/sustainable/studies/sustainable\\_en](https://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en). The infrastructure and external costs of the various transport modes are estimated in the 2019 *Handbook on the external costs of transport* (the Handbook) commissioned by the Commission. Member States are encouraged to use the Handbook for the purposes of the calculation of the aid to reduce external costs. If the Member States decide otherwise, they must provide a transparent, reasoned and quantified comparative cost analysis between the less polluting transport mode and the alternative transport modes. The methodology used and calculations performed must be made publicly available.