

## RECOVERY AND RESILIENCE FACILITY – STATE AID

### Guiding template: Premiums for the acquisition of zero- and low-emission road vehicles

#### *Link to European Flagship: Recharge and 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 growth and are needed for the digital-green twin transition. Pursuing these flagships will contribute to the success of the recovery of Europe.
6. The guiding template follows a uniform structure, providing sector-specific guidance as to when:

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

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

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

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

8. The investments under this guiding template will contribute to the *Recharge and Refuel* flagship,<sup>4</sup> promoting future-proof clean technologies to accelerate the use of sustainable, accessible and smart transport, charging and refuelling stations and extension of public transport. In this context, providing support for the acquisition of zero- and low-emission vehicles is a crucial step for a wider deployment of clean vehicles.
9. This guiding template therefore covers support granted by Member States for the acquisition (including leasing) of zero- and low-emission road vehicles, both new and used, such as bikes, scooters, cars, vans, trucks and buses<sup>5</sup>. Direct or indirect support to the manufacturers of zero- and low-emission vehicles (including for the upstream research and development) is excluded from the scope of this guiding template. Eligible vehicles are identified by Member States on the basis of the capability of such vehicles to contribute to the environmental objective of reducing greenhouse gas emissions.
10. The support is often provided in the form of a bonus (or a so-called premium) for the buyer covering part of the acquisition costs. However, the same principles apply to other forms of aid (*e.g.*, tax reductions).

## **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)

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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> In the Commission State aid decisional practice, Member States generally identified themselves the types of vehicles eligible for support, also depending on the greenhouse gas emissions reduction targeted by the measure concerned. However, their emissions must at minimum be below thresholds resulting from EU standards. When defining the scope of their support measures, Member States should take due account of the existing definition of zero- and low-emission vehicle contained in Regulation (EU) 2019/631 of the European Parliament and of the Council setting CO<sub>2</sub> emission performance standards for new passenger cars and for new light commercial vehicles and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011 (OJ L 111, 25.4.2019, p. 13).

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.

12. This guiding template focuses on aid at the level of the final beneficiary, i.e., the buyer of the vehicle.

*A. No economic activity*

13. Aid for activities, which are not of an economic nature, i.e., do not consist in the offering of goods or services on the market, are not considered State aid. Therefore, if the vehicles are used for private (personal or family) purposes by individuals in their own capacity who are not involved in economic activities, the support measures do not qualify as State aid to the buyer.

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

**Investment 2: Introduce a scrapping scheme for the most polluting vehicles:** *The direct beneficiaries of the scrapping scheme are individual consumers, which would normally exclude the presence of State aid. [...]*

14. However, if the buyer is an undertaking and the vehicles are used to perform economic/commercial activities, support for those vehicles may constitute State aid to that buyer.
15. Furthermore, financial support for the acquisition of vehicles used for activities that the State normally performs in the exercise of its public powers or that are not used for offering goods or services on a market normally also falls outside the scope of State aid rules. For instance, zero- or low-emission vehicles purchased by public authorities to be used exclusively by police or fire brigade may not involve State aid as they would not be used to carry out an economic activity.

*B. No State resources*

16. Measures that do not involve the transfer of public resources exclude the existence of State aid<sup>6</sup>. For example, a legislative initiative merely imposing certain minimum targets to buy or procure a certain number of zero- or low-emission vehicles<sup>7</sup> without deploying public funding for that purpose may not involve State resources<sup>8</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 2: Progressively phase out the most polluting vehicles in most polluted urban areas:** *As long as the applicable legislation aims at removing the most polluting vehicles from circulation in the most polluted areas and does not provide for compensation for phasing out and*

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<sup>6</sup> The concept of ‘transfer of public resources’ covers many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. A positive transfer of funds does not have to occur; foregoing State revenue is sufficient. In addition, the measure must be imputable to the State. See Notice on the notion of State aid, section 3.

<sup>7</sup> For example, Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles.

<sup>8</sup> Note that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

*scrapping those vehicles, there should not be State aid concerns. [...]*

**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

17. 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.
18. Selectivity is normally assessed based on a three-step analysis.<sup>9</sup> It may also stem from the discretion of the administration in the implementation of a scheme, *e.g.*, where eligibility for a generally applicable scheme is not based on the fulfilment of objective criteria and involves a margin of discretion of the granting authority. On this basis, a *prima facie* generally applicable measure (not targeting a specific sector or an identified group of undertakings) is selective where meeting the criteria set out therein does not automatically result in an entitlement to receive support<sup>10</sup>. For individual measures, the finding of economic advantage allows to presume selectivity.
19. Measures which are not designed to selectively favour a specific undertaking or sector and are *de jure* and *de facto* open to all actual and potential operators are regarded as general in nature and thus do not constitute State aid.<sup>11</sup> This does not mean that support measures must include all available technologies to be qualified as general, even though technological neutrality may be a strong indication that the measure is not selective.
20. Based on the abovementioned principles, measures targeting one or a number of specific groups of undertakings (*e.g.*, taxi companies and/or bus operators) are not considered general in nature and normally involve State aid to those buyers. These measures normally provide those undertakings with a selective advantage consisting of relieving them from part of costs inherent to their economic activity, which they would normally have to bear themselves.

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. [...]*

**Reform 4: Simplify and harmonize permitting procedures for alternative fuels infrastructure:** *Measures to make permit procedures leaner and quicker and to ensure*

<sup>9</sup> Notice on the notion of State aid, section 5.2.3.

<sup>10</sup> Please note, however, that the fact that a measure requires prior administrative authorisation does not automatically mean that it constitutes a selective measure. This is not the case where a prior administrative authorisation is based on objective, non-discriminatory criteria which are known in advance, thus circumscribing the exercise of the public administrations' discretion.

<sup>11</sup> Notice on the notion of State aid, paragraph 118.

*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. [...]*

**Investment 2: Introduce a scrapping scheme for the most polluting vehicles:** *The direct beneficiaries of the scrapping scheme are individual consumers, which would normally exclude the presence of State aid. Moreover, in order to exclude any potential indirect aid, the scheme will be general and open to any owner of a vehicle that predates the Euro X standard willing to scrap his/her car and purchase an alternative vehicle or a public transport pass. The criteria to be met by the applicants will be defined in an objective and non-discriminatory manner, avoiding any indirect preferential treatment to one or more manufacturers of alternative vehicles. [...]*

#### *D. No advantage*

21. Where the acquisition of zero- or low-emission vehicles is necessary for the discharge of public service obligations, the premium should be regarded as reducing the costs to be taken into account for the purposes of calculating the compensation to be paid to the undertaking carrying out its public service obligations.
22. In those cases, the existence of an economic advantage at the level of the operator may be excluded, if the following cumulative conditions are met:<sup>12</sup>
  - i. the zero- or low-emission vehicle is necessary for the discharge of a public service obligation clearly defined;<sup>13</sup>
  - ii. the parameters of compensation are established in advance in an objective and transparent manner;
  - iii. the compensation does not exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit.; and
  - iv. where the undertaking that is to discharge public service obligations is not chosen following a public procurement procedure, the level of compensation is determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with means to meet the public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

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

23. Where a measure strengthens the competitive position of the benefitting undertakings compared to that of actual or potential competitors that are not eligible for the measure, it is considered to have potentially distorting effects on competition.<sup>14</sup>

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<sup>12</sup> Judgment of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415, paragraphs 87-95.

<sup>13</sup> The act or series of acts must at least specify: (a) the content and duration of the public service obligations; (b) the undertaking and, where applicable, the territory concerned; (c) the nature of any exclusive or special rights assigned to the undertaking by the authority in question; (d) the parameters for calculating, controlling and reviewing the compensation; and (e) the arrangements for avoiding and recovering any overcompensation.

<sup>14</sup> Notice on the notion of State aid, paragraph 187.

24. Measures are considered capable of affecting trade between Member States where they strengthen the position of an undertaking (*i.e.*, the buyers of the vehicles in this case, which qualify as undertakings) as compared to other undertakings competing in intra-Union trade.<sup>15</sup> In principle, premiums for the acquisition of zero- and low-emission vehicles are capable of affecting trade between Member States, as they may strengthen the position of the beneficiaries in relation to their competitors in the Union.
25. The relatively small amount of the measure or size of the beneficiary do not exclude the possibility that trade between Member States might be affected.<sup>16</sup>
26. The distortion of competition and effect on trade can, however, 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.
27. 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>17</sup> Notably, the aid must be ‘transparent’ within the meaning of Article 4 of the Regulation (*i.e.*, it must be possible to calculate precisely the gross grant 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 Regulation must be complied with.
28. Where the acquisition of zero- or low-emission vehicles is necessary for the provision of a Service of General Economic Interest (‘SGEI’), costs for the purchase of zero- or low-emission vehicles may be covered by the compensation paid by the Member State for the provision of the SGEI. Public funding granted for the provision of an SGEI<sup>18</sup> in sectors other than land transport<sup>19</sup> not exceeding EUR 500 000 over three years is not regarded as State aid, provided the conditions of the SGEI *de minimis* Regulation are fulfilled.

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

29. 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:

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<sup>15</sup> Notice on the notion of State aid, paragraph 190.

<sup>16</sup> Notice on the notion of State aid, paragraph 192.

<sup>17</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.

<sup>18</sup> *E.g.*, compensation granted to undertakings for the provision of postal services entrusted as an SGEI may cover costs for the zero- or low-emission vehicles necessary for the provision of that SGEI, where the Member State concerned has imposed the use of such vehicles for the provision of that SGEI.

<sup>19</sup> Article 106 TFEU, the SGEI *de minimis* Regulation, the SGEI Decision and the SGEI Framework do not apply to public service compensation in the land transport sector. Indeed, Article 93 TFEU, laying down the rules applicable to public service compensation in the land transport sector, constitutes a *lex specialis* with regard to Article 106(2) TFEU.

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

30. If a Member State plans to grant State aid under an aid scheme already approved by Commission decision, it does not need to notify the scheme again 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.
31. 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>20</sup>.
32. 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>21</sup>.

*B. General Block Exemption Regulation (GBER)<sup>22</sup>*

33. 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.
34. Hence, measures supporting the acquisition of environmentally friendly vehicles are exempted from the notification obligation if the aid is granted in compliance with the conditions set out in Article 36 GBER on investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards.<sup>23</sup> This provision allows investment aid of up to EUR 15 million per undertaking per project. The eligible costs<sup>24</sup> shall be the extra investment costs compared to the costs of a reference (less environmental friendly) investment that would credibly be carried out without the aid (thus generally a diesel or a petrol car/bus). No aid may be granted to comply with applicable Union standards. In case of retrofitting<sup>25</sup> of vehicles, all relevant investment costs can be considered as eligible. The basic aid intensity is 40% and can be increased further by 20 percentage points and 10 percentage points if the beneficiary is a small or medium-sized enterprise, respectively.

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<sup>20</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>21</sup> As currently proposed in the Council Presidency compromise proposal of 7 October 2020.

<sup>22</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>23</sup> It must be demonstrated that the purchase of those vehicles is instrumental to significantly reducing the impact that the beneficiaries' activities have on the environment. Also, these measures may not lead to a mere displacement of the pollution to other segments of the economy (in particular the fuel production).

<sup>24</sup> Please note that the references to 'eligible costs' in this guiding template are to be understood exclusively for the purposes of State aid. Therefore, they have no bearing on whether a particular measure and its associated cost can be financed or not by the Facility.

<sup>25</sup> I.e. adding new emission-reducing components, for example filters, to the vehicle.

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. Service of General Economic Interest

35. If the acquisition of zero- or low-emission vehicles is necessary for the provision of services that are entrusted as an SGEI and those vehicles are intended to be used exclusively by the beneficiary to fulfil its public service obligations, its purchase may be considered as part of the SGEI and therefore the acquisition may be financed in compliance with the applicable State aid rules on SGEI<sup>26</sup>. This is, in particular, the case, where the Member State concerned imposes the use of zero- or low-emission vehicles for the provision of the SGEI. Depending on the sector concerned, compatibility of SGEI compensation qualifying as State aid is assessed under Articles 106(2) or 93 TFEU.

#### a. Regulation (EC) No 1370/2007<sup>27</sup>

36. Compensation for SGEI in the area of public passenger transport by road should be established in line with the provisions of Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road. If the conditions set out in that Regulation are complied with, aid to the service provider is exempted from prior notification to the Commission<sup>28</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 3: Support the deployment of sustainable shared mobility services:** *State aid*

<sup>26</sup> Where the same zero- or low-emission vehicles are used both to discharge public service obligations and to operate commercial routes, there may be a risk that the support is used to cross-subsidise commercial activities of the beneficiary. To avoid the risk that the compensation allocated exceeds the net cost of the SGEI and thus involves overcompensation, undertakings carrying out activities falling both inside and outside the scope of an SGEI must keep accounts that show separately the SGEI's costs and receipts, and those linked to other services.

<sup>27</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>28</sup> For additional guidance on the application of Regulation (EC) No 1370/2007, please see the guiding template on “*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)*”.



*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. [...]*

*b. SGEI Decision*<sup>29</sup>

37. Where the acquisition of zero- or low-emission vehicles is necessary for the provision of an SGEI in sectors other than land transport (*e.g.*, in the postal sector), the compatibility of the aid measure supporting such acquisition may be assessed as part of the SGEI compensation, on the basis of Article 106(2) TFEU.
38. State aid for the compensation of an SGEI up to EUR 15 million per year (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 also met. These are: (i) definition and entrustment of the SGEI, (ii) parameters of compensation established *ex ante* in a transparent manner, (iii) amount of compensation not exceeding the costs for the provision of the SGEI and a reasonable profit, and (iv) a mechanism to ensure the absence of overcompensation.

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

39. 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*

40. 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.
41. 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.
42. 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*

43. 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

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<sup>29</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 L7, 11.1.2012, p. 3.

within the European Union, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

44. To assess whether State aid in the form of premiums for the acquisition of zero- and low-emission road vehicles 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).
45. In its compatibility assessment, the Commission will check whether the conditions of Article 107(3)(c) TFEU are met. In particular:
  - The aid measure needs to facilitate the development of economic activities and have an incentive effect without resulting in an infringement of relevant EU law affecting the compatibility test.
  - The aid measure must not unduly affect trading conditions to an extent contrary to the common interest. For those purposes the Commission will check whether the State intervention is needed, appropriate and proportionate and addresses a market failure to achieve the objectives pursued by the measure. The Commission will also verify that transparency of the aid is ensured. Together, these conditions ensure that the distortive effects of the aid are as far as possible limited.
  - The Commission will assess the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States against the common interest. In particular, the Commission will in this step not only consider the benefits of the aid for the beneficiary's economic activity, but also take into account the positive effects of the aid for the community at large.
  - The Commission will finally balance the positive effects with the negative effects of the aid on competition and trade.
46. Compatible support needs to incentivise vehicle operators to replace their fossil fuel vehicles with zero- or low-emission vehicles to provide for better environmental protection than the one resulting from the Union standards and to be granted for the additional costs of acquiring zero- or low-emission electric vehicles compared to vehicles meeting the applicable Union standards (currently EURO VI). Proportionality of the aid is normally ensured provided the aid is granted for these eligible costs on the basis of a competitive bidding process, which allows to ensure that the aid will be limited to the minimum needed to meet the environmental protection sought.
47. To ensure that the measure supporting the acquisition of zero- and low-emission vehicles does not violate the Treaty provisions on free movement of services, goods, etc., the measure must not be subject to restrictive clauses which would, e.g., require purchasing domestic vehicles, thus excluding imported vehicles from its scope of application. Normally, a restriction that the supported vehicle is registered in the territory of the Member State providing support would be acceptable.

*a. Environmental and Energy Aid Guidelines ('EEAG')*<sup>30</sup>

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<sup>30</sup> Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

48. The Commission may assess the compatibility of measures supporting the acquisition of zero- and low-emission vehicles under Section 3.2 of the EEAG. In particular:
- i. The Commission first examines whether the aid aims at facilitating the development of economic activities through the acquisition of zero- and low-emission vehicles.<sup>31</sup> The Commission welcomes such aid as also in line with the policy objectives set out in Section 2.1.5 of the European Green Deal Communication.<sup>32</sup> According to this Communication, the shift to sustainable and smart mobility should be accelerated, and to achieve climate neutrality, a 90% reduction in transport emissions is needed by 2050.
  - ii. Regarding the need for State intervention, the Commission examines whether the aid is targeted at a situation where it can bring about a material improvement that the market alone cannot deliver, contributing to an increased level of the environmentally friendly economic activity.
  - iii. The Commission then verifies whether the aid is an appropriate instrument to achieve the development of the economic activity at issue. The Member State concerned must demonstrate that: (i) alternative policy options would not be equally suitable to achieve that increased economic activity; and (ii) alternative, less distortive, aid instruments would not deliver equally efficient outcomes. Therefore, as part of the notification, other existing or potential regulatory interventions, like an emissions trading system where applicable, should be mentioned, and their current impact explained and compared to the expected effect of the notified measure (*e.g.*, regulation may be more burdensome).
  - iv. Furthermore, the Commission verifies that the aid has an incentive effect, meaning that the aid must change the beneficiary's behaviour, *e.g.*, the beneficiary would not buy the vehicle at issue without the aid.
  - v. The Commission then examines if the aid is proportionate: environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the objective of the measure to which the aid is targeted. Aid will be considered to be limited to the minimum necessary if it corresponds to the net extra cost necessary to meet that objective, *i.e.*, the development of the economic activity at issue in a manner that increases the level of environmental protection, compared to the counterfactual scenario in the absence of aid. The maximum aid intensities are listed in Annex I to the EEAG, starting at 40% with bonuses for SMEs and in assisted regions. Also an eco-bonus is possible. The aid may reach up to 100% of eligible costs when it is granted in an open, transparent and non-discriminatory competitive bidding process.
  - vi. The Commission considers whether the aid does not have an undue negative effect on competition and trade. The aid needs to operate in a fair, open and transparent way.

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<sup>31</sup> Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 24.

<sup>32</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM/2019/640 final.

- vii. Finally, the Commission balances the positive effects of the aid against its negative effects on competition and trade. For a State aid measure to be declared compatible with the internal market, its positive effects should outweigh the negative impact on competition and trade.
49. The Commission has already adopted several decisions finding support for the acquisition of electric buses compatible with the internal market.<sup>33</sup> These cases covered support which exceeded the aid intensities allowed under Article 36 GBER and were assessed in line with the guidance provided in the EEAG.

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. [...]*

*b. SGEI in the land passenger transport sector: Article 93 TFEU*

- 50. As explained above, if the zero- or low-emission vehicles are necessary for the provision of an SGEI, its deployment may be considered as part of the SGEI mission.
- 51. Where an undertaking is entrusted with an SGEI in the area of land transport, Article 93 TFEU is directly applicable as a legal basis for establishing the compatibility of aid not covered by Regulation (EC) 1370/2007<sup>34</sup>.
- 52. Article 93 TFEU provides that “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”.

*c. SGEI Framework<sup>35</sup>*

- 53. State aid for the acquisition of zero- and low-emission vehicles necessary for the provision of a genuine SGEI in sectors other than the land transport (e.g., in the postal sector), may be assessed on the basis of the SGEI Framework, where the SGEI at issue does not fall within the scope of the SGEI Decision or the SGEI *de minimis* Regulation.
- 54. Under the SGEI Framework, which is based on Article 106(2) TFEU, an aid measure should comply with the following main conditions: (i) entrustment of a clearly defined

<sup>33</sup> *Ex multis*, Commission decision dated 26 February 2018 in State aid case SA.48190 (2017/N) – Germany – Support scheme for the acquisition of electric buses for urban public transport (C(2018) 1098 final).

<sup>34</sup> This provision constitutes the *lex specialis* with regard to Article 106(2) TFEU and lays down the rules applicable to public service compensation in the land transport sector.

<sup>35</sup> Communication from the Commission - European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.

and genuine SGEL, (ii) compliance with Directive 2006/111/EC,<sup>36</sup> (iii) compliance with EU public procurement rules, (iv) absence of discrimination, (v) a mechanism to avoid any overcompensation and (vi) transparency.

## 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 - European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.
- Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM/2019/640 final.
- Guidelines on regional State aid for 2014-2020, OJ C 209, 23.07.2013, p. 1.
- Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.

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<sup>36</sup> Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L 318, 17.11.2006, p. 17.