

## RECOVERY AND RESILIENCE FACILITY – STATE AID

### Guiding template: Upgrading education and training, including digital skills and relevant connectivity

#### *Link to European Flagship: Reskill & Upskill*

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

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

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

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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.

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 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. Education and training are some of the main instruments to strengthen human capital and social cohesion. Besides, it has a significant positive impact on growth, productivity, employment as well as on economic and social resilience. Education and training investments usually have positive external effects for society as a whole, in particular as they promote knowledge and create a resilient society. From an economic point of view, education and training investments increase the pool of skilled workers from which undertakings can draw, and in turn improve the competitiveness of the economy and promote a knowledgeable and resilient society.
9. In particular, as highlighted in the Digital Education Action Plan 2021-2027<sup>4</sup>, investments in digital transformation in the field of education and training are essential to enhance teaching and learning, and to guarantee equal access to education for all citizens. Digital technologies have a huge potential for improving the way we teach and learn, making education more inclusive and personalised. Digital competences and skills are also a fundamental pillar to ensure active participation in society and the competitiveness of our economy in a globalized world. The current crisis caused by the COVID-19 outbreak has shown more than ever the need to invest in digital skills to guarantee that education and training are fit for the digital age and can offer educational continuity of education and training in all circumstances, as well as to close the digital gap in education by making sure that no learner is left behind. This guiding template therefore focuses on investments for the provision of digital training and the development of digital skills<sup>5</sup>.

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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> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Digital Education Action Plan 2021-2027 Resetting education and training for the digital age, COM/2020/624 final.

<sup>5</sup> Note that Recovery and Resilience Plans have to include a minimum level of 20% of expenditure related to digital, for instance by contributing to the digital transition in the category of human capital (i.e. by developing digital capacity to support resilient and efficient education, training and research systems; enhancing digital skills and competences for the digital transformation, including audiovisual and media,

10. The much wider use of distance and online learning during the COVID-19 crisis accelerated the use of digital content and tools to temporarily complement or even replace face-to-face teaching and learning in order to ensure continuity. A more systematic use of digital technologies for teaching and learning can also be expected in the longer term.
11. The investments and reforms in this area will contribute to the *Reskill and Upskill* flagship – The adaption of education and training systems to support digital skills development of adults and young people and educational and vocational training for all ages.<sup>6</sup>

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

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

#### A. No economic activity

13. Subsidies for education and training purposes granted to non-economically active individuals, unemployed individuals, or employed individuals in their capacity as individuals, do not constitute State aid, since these individuals do not perform an economic activity and do not constitute undertakings in the sense of Article 107(1) TFEU.<sup>7</sup>

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Equipping the workforce of today and tomorrow with the skills needed in the labour market](#)

**Reform 4: Development of a national programme of apprenticeships in ICT, including in SMEs:** *Given that there will be no transfer of public resources, that all companies can indicate their interest to participate in the programme and that the measure would be addressed directly to citizens to increase their digital literacy levels, the presence of State aid is excluded. [...]*

**Investment 2: Setting up of seven Centres of Vocational Excellence (CoVEs):** *As CoVEs would generally not perform economic activities, State aid rules would not apply at the level of*

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and building a trusted European digital education ecosystem of content, tools, services and platforms, including to improve access to and build digital skills for distance learning for those groups facing barriers to decrease the digital divide) See Commission Staff Working Document – Guidance to Member States Recovery and Resilience Plans available at [https://ec.europa.eu/info/sites/info/files/3\\_en\\_document\\_travail\\_service\\_part1\\_v3\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/3_en_document_travail_service_part1_v3_en_0.pdf).

<sup>6</sup> More information on this flagship can be found here: [https://ec.europa.eu/info/sites/info/files/examples\\_of\\_component\\_of\\_reforms\\_and\\_investment\\_reskill\\_and\\_upskill\\_en.pdf](https://ec.europa.eu/info/sites/info/files/examples_of_component_of_reforms_and_investment_reskill_and_upskill_en.pdf). Note that The Recovery and Resilience Plans can also support other relevant education and training reforms and investments, in line with the Facility legal framework and guidelines, and the Country Specific Recommendations.

<sup>7</sup> It is important to ensure that even if the direct beneficiaries are not undertakings in the sense of Article 107(1) TFEU, the subsidies do not confer an indirect advantage to other economic operators. See Judgment of the Court of Justice of 28 July 2011, *Mediaset SpA v Commission*, C-403/10 P, ECLI:EU:C:2011:533, paragraphs 75 to 77.

*the entity operating the CoVE insofar as it does not perform economic activities. If the skills to be developed are of general application and/or participants are not enterprises, there are no State aid concerns either. [...]*

14. Public education organized within the national educational system funded and supervised by the State may be considered as a non-economic activity<sup>8</sup>, and therefore fall outside the scope of State aid rules. In particular, educational systems that are financed entirely or mainly by public funds and not by pupils or their parents are considered non-economic and their financing does not fall within the scope of State aid rules.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Equipping the workforce of today and tomorrow with the skills needed in the labour market](#)

**Investment 3: Investing in digital equipment to support the provision of digital learning and skills in schools, VET and higher education institutions:** *Generally no presence of State aid. For higher education, no State aid involved if the higher education institutions are part of the public education system and financed mainly by the State, as this would not constitute an economic activity subject to State aid rules.*

15. In the same vein, the fact that pupils or their parents are required to pay a tuition or enrolment fee which contribute only to a small fraction of the true costs of the operating expenses of the system does not alter the non-economic nature of the educational activity conducted, as such payment cannot be considered a genuine remuneration for the service provided.
16. These principles can cover public educational services such as private and public primary schools, and kindergartens, secondary teaching activities in universities, and the provision of education in universities. Consequently, and by way of example, an investment to support the purchase and installation of digital equipment in one of these institutions providing non-economic services would not entail State aid to the educational institution.
17. In contrast, educational services predominantly financed by parents or pupils or other commercial means should be qualified as economic in nature. Accordingly, the public financing of educational systems used for such economic activities may constitute State aid.
18. If the educational institution is involved in both economic and non-economic activities, public funding thereof could fall under State aid rules only insofar as it would cover the costs linked to the economic activities in question. In such circumstances, when Member States ensure, based on a proper separation of accounts, that the public funding is only provided for the non-economic activities of a given educational service provider and that there is no cross-subsidization of its economic activities, no State aid is involved<sup>9</sup>.

<sup>8</sup> Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (“Notice on the notion of State aid”), OJ C 262, 19.7.2016, p. 1, paragraphs 28 to 30.

<sup>9</sup> See judgment of the Court of Justice of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania*, C-74/16, ECLI:EU:C:2017:496, paragraphs 51 to 53, on separation of accounts and cross-subsidisation between economic and non-economic activities.

### B. No State resources

19. Measures that do not involve the transfer of public resources exclude the existence of State aid<sup>10</sup>. For example, updating legal frameworks or developing national education and training programs do not generally imply the transfer of public resources<sup>11</sup>.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Equipping the workforce of today and tomorrow with the skills needed in the labour market](#)

**Reform 1: Creation of the legal framework for individual entitlements for quality labour market relevant training in the form of individual learning accounts:** *To the extent that the reform is limited to setting up a new legal framework for individual entitlements for quality labour market relevant training, there is no transfer of public resources that could lead to an undue advantage to one or more beneficiaries. Moreover, if the training system is financed, implemented and managed by the relevant stakeholders (trade unions, employers etc.) without involvement of the State in funding decisions, there is no imputability to the State of the way in which expenditures are decided. [...]*

**Reform 2: New legal framework for vocational education and training (VET) aiming at updating and interlinking initial and continuing VET provision with a view to support the digital and green transition:** *As the reform is limited to setting up a new legal framework for VET, there is no transfer of public resources that could lead to an undue advantage to one or more beneficiaries. On this basis, the presence of State aid is excluded. [...]*

**Reform 3: Develop and update modules and curricula for digital skills in primary and secondary education with a focus on fundamental computing skills and digital media literacy:** *Given that there is no transfer of public resources, the presence of State aid is excluded*

**Reform 4: Development of a national programme of apprenticeships in ICT, including in SMEs:** *Given that there will be no transfer of public resources, that all companies can indicate their interest to participate in the programme and that the measure would be addressed directly to citizens to increase their digital literacy levels, the presence of State aid is excluded. [...]*

### C. No selectivity

20. 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.
21. This can be the case, for example, of a general reform of a tax or of the social security contributions. Selectivity is normally assessed by means of a three-step analysis<sup>12</sup>. Reductions or exemptions from taxes or social security contributions can fall outside State aid rules when they apply in the same way to all companies that are in a comparable factual and legal situation in the light of the inherent objective of the tax or social security system.

<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.

<sup>11</sup> Note however that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

<sup>12</sup> Notice on the notion of State aid, section 5.2.3.

22. Selectivity can also stem from the discretion of the administration in the implementation of a scheme, in particular when fulfilling objective criteria do not automatically result in eligibility for the measure.
23. In the case of individual measures, the finding of an economic advantage allows to presume selectivity.

*D. No advantage*

24. By subsidizing training, Member States may support directly the final beneficiaries of the training (i.e. undertakings in need of trainings)<sup>13</sup> or support the training providers.
25. Given the purpose of the investment subject to this guiding template, the absence of advantage at the level of the final beneficiaries is unlikely.
26. However, in certain circumstances, the existence of an economic advantage may be excluded at the level of the training providers. Indeed, if the undertaking that carries out the subsidized trainings is selected on the basis of a competitive, transparent, non-discriminatory and unconditional tender in line with the principles of the TFEU in public procurement<sup>14</sup>, an advantage can be excluded at the level of the training provider as it can be presumed that the price paid would be in line with market conditions.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Equipping the workforce of today and tomorrow with the skills needed in the labour market](#)

**Reform 1: Creation of the legal framework for individual entitlements for quality labour market relevant training in the form of individual learning accounts:** [...] *As for the design and set up of individual learning accounts through a digital platform, the proposed measure will be implemented following public procurement rules (open, transparent, non-discriminatory and unconditional tender) and sound financial management principles. This should ensure that the State will pay market prices for the services procured, and thus no State aid would be granted.*

**Reform 2: New legal framework for vocational education and training (VET) aiming at updating and interlinking initial and continuing VET provision with a view to support the digital and green transition:** *As regards the financial and non-financial incentives to set up national / regional / sectoral “Pacts for Skills”, they aim at facilitating framework agreements and partnerships between several stakeholders, upstream of any actual service provision on the market for training. As such, it appears that the incentives would not aim at conferring an advantage on (specific) undertakings carrying out an economic activity, thus excluding State aid. In addition, in order to avoid aid to training providers, they will be selected via open and transparent procedures and the advantage, if any, will be passed on entirely to the final beneficiaries, i.e. those receiving the training.*

**Reform 4: Development of a national programme of apprenticeships in ICT, including in SMEs:** [...] *In case there would be transfer of public resources, and in order to avoid aid to training providers, it will be ensured they are selected via open and transparent procedures and that the advantage, if any, is passed on entirely to the final beneficiaries, i.e. those receiving the training.*

<sup>13</sup> As mentioned in point 13 above, subsidies for education and training purposes granted to non-economically active individuals, unemployed individuals, or employed individuals in their capacity as individuals, do not constitute State aid, since these individuals do not perform an economic activity and do not constitute undertakings in the sense of Article 107(1) TFEU. This could include the individuals benefitting from individual learning accounts, as laid out in the Council Decision (EU) 2020/1512 of 13 October 2020 on guidelines for the employment policies of the Member States.

<sup>14</sup> Notice on the notion of State aid, paragraphs 89 to 96.



27. If the advantage is entirely passed on to the final beneficiary, for example in the form of a price reduction, then the training provider receives no advantage from the State and would therefore not be subject to State aid rules. In such case, only the final beneficiary of the training would be subject to State aid rules.
28. Even if the aid is not totally passed on to the final beneficiary of the trainings the existence of an economic advantage may also be excluded for the training provider. This is the case when the training provider is entrusted with a Service of General Economic Interest (SGEI) and if the trainings may be considered as part of the SGEI mission. An economic advantage may be excluded if: (i) the recipient undertaking has clearly defined public service obligations to discharge; (ii) the parameters of compensation have been established in advance in an objective and transparent manner; (iii) there is no compensation paid beyond the net costs of providing the public service and a reasonable profit; and (iv) the SGEI<sup>15</sup> 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. This could be the case, for instance, if the training provided allows access to or reintegration into the labour market or if it fosters the social inclusion of a vulnerable group.

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

29. In cases of very low amounts of aid, distortion of competition can be excluded. This is known as *de minimis* aid. For cases falling under *de minimis*, there is no need for prior approval from the European Commission. Member States do not even have to inform the Commission of such aid.
30. Support granted under the *de minimis* Regulation<sup>16</sup> is not regarded as State aid if no more than EUR 200 000 is granted to a single undertaking over a period of three fiscal years and the other conditions laid down in the *de minimis* Regulation are also respected.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Equipping the workforce of today and tomorrow with the skills needed in the labour market](#)

**Investment 3: Investing in digital equipment to support the provision of digital learning and skills in schools, VET and higher education institutions:** [...] *The amounts of the lump sums will not exceed EUR 200 000 per beneficiary (schools, VET providers, higher education institutions, adult learning institutions) over any period of three fiscal years (including other types of support for the same eligible costs), so they will be de minimis and thus deemed as no aid. Entities providing work-based learning and apprenticeships will be eligible for a lump sum investment for purchase of digital equipment necessary for training. The lump sum will not exceed EUR 200 000 per beneficiary over any period of three fiscal years, including other types of support for the same eligible costs.*

**Investment 4: Investment in fostering the digital skills of teachers and trainers and developing digital pedagogical content:** *Generally no presence of State aid. The amounts of the lump sums will not exceed EUR 200 000 per beneficiary (school, VET provider or higher education)*

<sup>15</sup> Note that professional training – if it allows access to or reintegration into the labour market or if it fosters the social inclusion of a vulnerable group – will be generally recognised as a SGEI.

<sup>16</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1.

over any period of three fiscal years (including other types of support for the same eligible costs), so they will be *de minimis* and thus deemed as no aid.

31. In the same vein, public funding granted for the provision of a Service of General Economic Interest not exceeding EUR 500 000 over three years is not regarded as State aid, provided the other conditions of the SGEI *de minimis* Regulation<sup>17</sup> are also fulfilled.
32. Additionally, there may be cases of support measures which have a purely local impact and consequently have no effect on trade between Member States. This is the case if the beneficiary supplies products or services to a limited area within a Member State and is unlikely to attract customers from other Member States, and if it cannot be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishments<sup>18</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<sup>19</sup>, it may be considered compatible with the internal market and can be granted without notification in the following instances:

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

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>20</sup>.

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<sup>17</sup> Commission Regulation No 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

<sup>18</sup> See for instance Commission decision in case NN54/2006 – Czech Republic – *Prerov logistics College*, points 19 and 20.

<sup>19</sup> Aid can also take the form of tax advantages, reductions of social security contributions, and other measures mitigating the normal charges of specific undertakings. Fiscal aid can be found compatible under the same rules as other forms of aid (i.e. grants), in particular if the tax advantage is linked to a specific investment or activity.

<sup>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.



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>21</sup>.

*B. Block Exemption Regulations*

37. If State aid falls under a block exemption regulation, Member States do not have to notify such State aid. However, they have to inform the Commission thereof.

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

38. A measure is exempted from notification if it is granted in compliance with the conditions of the GBER. In particular, according to the section 5 of the GBER, training aid shall be compatible with the internal market within the meaning of Article 107(3) TFEU and shall be exempted from the notification requirement of Article 108(3) TFEU, provided that the conditions laid down in **Article 31** and Chapter I of the GBER are fulfilled.

39. These conditions are the following:

- i. Respecting the general conditions of transparency, the incentive effect, aid intensity and eligible costs<sup>23</sup>, cumulation and publication established in Chapter I.
- ii. The amount of aid may not exceed the threshold of EUR 2 million per training project.
- iii. Aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training.
- iv. The eligible costs shall be: a) trainers' personnel cost, b) trainers' and trainees' operating costs directly relating to the training project, c) costs of advisory services linked to the training project, and d) trainees' personnel costs and general indirect costs for the hours during which the trainees participate in the training.
- v. The aid intensity shall not exceed 50% of the eligible costs. It may be increased, up to a maximum aid intensity of 70% of the eligible costs as follows: a) by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers; and b) by 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small enterprises.
- vi. Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 100% of the eligible costs if the trainees are not active members of the crew but supernumerary on board, and the training is carried out on board of ships entered in Union registers.

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<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> 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.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Equipping the workforce of today and tomorrow with the skills needed in the labour market](#)

**Reform 2: New legal framework for vocational education and training (VET) aiming at updating and interlinking initial and continuing VET provision with a view to support the digital and green transition:** *In case of direct funding of training actions for selected sectors or undertakings, public funding may constitute State aid but be exempted from notification if granted in conformity with the General block exemption Regulation (GBER; it applies to aid which does not exceed EUR 2 million per training project – it shall not be granted for training which undertakings carry out to comply with national mandatory standards on training). If the measure constitutes State aid and does not meet the GBER conditions, State aid clearance will be sought following a notification to the Commission.*

**Investment 1: Investment in adult training opportunities through inter-company training centres:** *Specific training programmes for skills needed in designated sectors or companies may involve State aid to undertakings but be exempted from notification if granted in conformity with the GBER (Article 31 GBER applies to aid which does not exceed EUR 2 million per training project – it shall not be granted for training which undertakings carry out to comply with national mandatory standards on training). Since the beneficiaries would be SMEs, the maximum aid intensity can go up to 60% of the eligible costs (for medium-sized enterprises) and 70% of the eligible costs (for small enterprises). If the measure constitutes State aid and does not meet the GBER conditions, State aid clearance will be sought following a notification to the Commission.*

*b. Agricultural Block Exemption Regulation (ABER)<sup>24</sup>*

40. For training activities in the agricultural and in the forestry sector, aid may be granted to SMEs in accordance with the relevant provisions of the ABER. These are notably **Article 21 ABER for undertakings active in the agricultural sector** ('Aid for knowledge transfer and information actions') and **Article 38 ABER for undertakings active in the forestry sector** ('Aid for knowledge transfer and information actions in the forestry sector').
41. For both sectors, the training activities that can be covered are vocational training and skills acquisition actions, including training courses, workshops and coaching, demonstration activities and information actions.
42. Aid can be granted for the following eligible costs:
  - i. The costs of organising the vocational training, skills acquisition actions, including training courses, workshops and coaching, demonstration activities or information actions;
  - ii. The costs for travel, accommodation and per diem expenses of the participants;
  - iii. Exclusively for the agriculture sector: the cost of the provision of replacement services during the absence of the participants.
43. The aid intensity shall not exceed 100% of the eligible costs.
44. The aid referred to in point 42 (i) and (iii) shall not involve direct payments to the beneficiaries. The aid shall be paid to the knowledge transfer and information actions providers.

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<sup>24</sup> Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193 of 1.7.2014, p. 1

45. Bodies providing knowledge transfer and information services must have the appropriate capacities in the form of staff qualifications and regular training to carry out those tasks.

*C. Service of General Economic Interest: SGEI Decision<sup>25</sup>*

46. If the training is necessary for the provision of a service entrusted as an SGEI, it may be considered as part of the SGEI mission. State aid for the compensation of such an SGEI can be exempted from notification on the basis of the SGEI Decision, provided that the criteria of the SGEI Decision are met, in particular: definition and entrustment of an SGEI; parameters of compensation established ex ante in a transparent manner; amount of compensation not exceeding the costs for the provision of the SGEI and a reasonable profit; a mechanism to ensure the absence of overcompensation.
47. Professional training falls under Article 2(1)(c) of the SGEI Decision if it allows access to or reintegration into the labour market or if it fosters the social inclusion of a vulnerable group. Therefore, for example, professional training for the long-term unemployed may fall under Article 2(1)(c) of the SGEI Decision. If the professional training, in contrast, is for persons already in employment, it would normally not fall under Article 2(1)(c) of the SGEI Decision, unless provided for the inclusion of a vulnerable group.

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

48. 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*

49. 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.
50. 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.
51. 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*

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<sup>25</sup> Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.01.2012, p. 3.

52. Once it has been established that the investment entails State aid, it is necessary to assess whether the aid is compatible with the internal market.
53. On the basis of Article 107(3)(c) TFEU, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the European Union, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
54. To assess whether State aid can be considered compatible with the internal market, the Commission analyses whether the design of the aid measure ensures that the positive effect of the aid on the development of the supported economic activity (positive condition) exceeds its potential negative effects on trade and competition (negative condition).
55. 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.

*a. Training Communication*<sup>26</sup>

56. The Training Communication sets out guidance as to the criteria the Commission will apply for the assessment of training aid measures whenever such kind of measure needs to be notified.
57. Any individual training aid, whether granted *ad hoc* or on the basis of a scheme, will be subject to the Training Communication when its grant equivalent exceeds EUR 2 million per training project. The criteria set out in the Training Communication will not be applied mechanically. The level of the Commission's assessment and the kind of information it may require will be proportional to the risk of distortion of competition. The scope of the analysis will depend on the nature of the case.

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<sup>26</sup> Communication from the Commission — Criteria for the analysis of the compatibility of State aid for training subject to individual notification, OJ C 188, 11.8.2009, p. 1.

58. In addition, according to the Training Communication, the compatibility analysis, will, among other things, need to consider the following elements:
- The nature of the training (specific or general). “Specific training” means training involving tuition directly and principally applicable to the employee’s present or future position in the undertaking and providing qualifications which are not or only to a limited extent transferable to other undertakings or fields of work. “General training” means training involving tuition which is not applicable only or principally to the employee’s present or future position in the undertaking, but which provides qualifications that are largely transferable to other undertakings or fields of work.
  - The transferability of the skills acquired during the training.
  - The participants in the training: the inclusion of disabled or disadvantaged workers may increase the positive externalities of the training.
59. State aid is not the only policy instrument available to the Member States to encourage training. The Commission will in particular take account of any impact assessment of the proposed measure the Member States may have made.
60. Incentive effect and necessity of the aid. Member States should demonstrate the existence of an incentive effect (more and better training than would have been the case without the aid) and of the necessity of the aid (it cannot be presumed that State aid for training is always needed). First, the beneficiary must submitted an application for the aid to the Member State. Second, the Member State must demonstrate that the aid leads to an increase, by comparison to the situation without aid, in the size, quality, scope or targeted participants of the training project. There is no incentive effect if a legal obligation for employers to provide a certain type of training exists.
61. Proportionality of the aid. Member States must demonstrate that the amount is kept to the minimum in order to achieve the objective of the aid. Eligible costs must be calculated in accordance with Article 31 GBER<sup>27</sup> and be limited to the costs arising from training activities which would not be undertaken without aid.
62. Negative effects of the aid. If the aid is proportionate, the negative effects of the aid are likely to be limited and an analysis of the negative effects may not be necessary. However, in some cases, the aid may result in a change of behaviour of the beneficiary which significantly distorts competition.
63. The last step in the analysis is to evaluate the extent to which the positive effects of the aid outweigh its negative effects. This will be done on case-by-case basis.
- b. Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (Agricultural Guidelines)<sup>28</sup>*
64. Aid may be granted for training activities that aim at knowledge transfer and information actions in the agricultural sector and in the forestry sector.

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<sup>27</sup> The Training Communication refers to Article 39 of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214, 9.8.2008, p. 3. However, as Regulation 800/2008 is no longer in force, that reference must be understood to Article 31 of Regulation 651/2014 (GBER). See point 39(iv) above.

<sup>28</sup> OJ C 204, 1.7.2014, p. 1.

65. In the **agricultural sector**, for the aid to be compatible with the internal market under Article 107(3)(c) TFEU, it must comply with the common assessment principles of the Agricultural Guidelines, with the general conditions for aid for technical support and with the specific conditions of section 1.1.10.1 of Chapter 1 of Part II of the Agricultural Guidelines.
66. In the **forestry sector**, for the aid to be compatible with the internal market under Article 107(3)(c) TFEU, it must comply with the common assessment principles of the Agricultural Guidelines, with the general conditions for aid for technical support and with the specific conditions of section 2.4 of Chapter 2 of Part II of the Agricultural Guidelines.
67. For **both sectors**, aid may be granted for the following training activities: vocational training and skills acquisitions, including training courses, workshops and coaching, demonstration activities and information actions.
68. Aid can be granted for the following eligible costs<sup>29</sup>:
  - The costs of organising the vocational training, skills acquisition actions, including training courses, workshops and coaching, demonstration activities or information actions;
  - The costs for travel, accommodation and per diem expenses of the participants;
  - Exclusively for the agriculture sector: the cost of the provision of replacement services during the absence of the participants.
69. The aid intensity shall not exceed 100% of the eligible costs.
70. The aid referred to in point 67 (i) and (iii) shall not involve direct payments to the beneficiaries. The aid shall be paid to the knowledge transfer and information actions providers.
71. Bodies providing knowledge transfer and information services must have the appropriate capacities in the form of staff qualifications and regular training to carry out those tasks.

## 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 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.
- Commission Regulation (EU) No 1408/2013 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 in the agriculture sector, OJ L 352, 24.12.2013, p. 9.
- 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

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<sup>29</sup> In case of demonstration projects, aid may also be granted for investment costs. For details, please see directly section 1.1.10.1 or section 2.4 respectively of Chapter 2 of Part II of the Agricultural Guidelines.

undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

- 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 Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193 of 1.7.2014, 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.
- Communication from the Commission — Criteria for the analysis of the compatibility of State aid for training subject to individual notification, OJ C 188, 11.8.2009, p. 1.
- Notice from the Commission on the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020.
- 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.