

## RECOVERY AND RESILIENCE FACILITY – STATE AID

### Guiding template: Electric recharging stations and hydrogen stations for 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. This guiding template relates to investments to deploy infrastructure for supplying electricity and/or hydrogen to road vehicles, such as bikes, scooters, cars, vans, trucks, or buses<sup>4</sup> (“recharging or refuelling infrastructure”), irrespective of whether they concern dedicated infrastructure intended for the beneficiary’s own use, semi-public infrastructure<sup>5</sup> or publicly accessible infrastructure.
9. Public support may cover costs for the construction of the recharging or refuelling infrastructure, as well as additional necessary costs for its deployment, such as costs for the connection to the grid in case of recharging infrastructure for electric vehicles<sup>6</sup>. Guidance concerning support for the purchase of electric or other zero or low-emission road vehicles is provided in the separate guiding template on “*Premiums for the acquisition of zero- and low-emission road vehicles*”. The investments covered by this guiding template can be combined with investments aiming at improving the energy efficiency of buildings; for this type of investment reference is made to the guiding template on “*Energy efficiency in buildings*”.
10. The investments under this guiding template will contribute to the *Recharge and Refuel* flagship,<sup>7</sup> promoting future-proof clean technologies to accelerate the use of sustainable, accessible and smart transport, recharging and refuelling infrastructure and extension of public transport. The support for recharging and refuelling infrastructure is

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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> Guidance concerning investments for the deployment of recharging and refuelling stations for zero- and low-emission vehicles in the maritime and air transport sectors is provided in the guiding template “*Other low emission transport modes – rail and inland waterway (rail infrastructure, transshipment terminals, rail maintenance workshops, acquisition / retrofitting of rail rolling stock and acquisition/retrofitting of inland waterway fleet) and short-sea shipping (aid for the launching of short-sea shipping services)*”.

<sup>5</sup> This relates to recharging or refuelling infrastructure located on land with restricted access, which can be used by the owner/operator as well as third parties (e.g., company staff, customers, visitors etc.).

<sup>6</sup> Costs may include, for example, cost of the recharging or refuelling infrastructure itself, installation of or upgrades to any electrical or other power components, including the transformer, that are required for connecting the recharging or refuelling infrastructure to the grid or a local electricity or fuel production or storage unit, technical equipment, civil engineering works, land or road adaptations, installation costs and costs for related and necessary permits.

<sup>7</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).

a cornerstone of this initiative. In “The European Green Deal”<sup>8</sup>, the Commission sets the objective of having at least 1 million publicly accessible recharging and refuelling points in place by 2025. Building-up a sufficiently dense, widespread, reliable and easy-to-use-alternative fuels infrastructure network is a necessary precondition for broader use of zero- and low-emission vehicles and an important enabler for their market uptake.

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

11. The following sections present a comprehensive, but not exhaustive, number of separate instances in which the application of State aid rules or the existence of State aid may be excluded. Given the cumulative nature of the criteria of Article 107(1) TFEU, if one of the following criteria is not met, the presence of State aid can be excluded and therefore there is no need to notify the measure to the Commission prior to its implementation.
12. This guiding template examines the existence of aid at the levels of the owner/developer, operator and user of the infrastructure, but also at these levels combined (e.g. integrated developer and operator).

#### A. No economic activity

13. Based on the Commission’s most recent State aid decisional practice, the deployment and operation of recharging or refuelling infrastructure is considered an economic activity.<sup>9</sup> This is because this activity is not intrinsically linked to the prerogatives of the State as public authority and the infrastructure is intended to be commercially exploited through the offering of recharging or refuelling services on the market.
14. However, if the recharging or refuelling infrastructure is aimed to be used exclusively for non-economic activities, support provided for the deployment of that infrastructure would not qualify as State aid. This is the case of infrastructure that is used for activities that the State normally performs in the exercise of its public powers (e.g. for safety or security)<sup>10</sup> or that is not used for offering goods or services on a market.<sup>11</sup> It cannot be excluded that a state-owned dedicated infrastructure used exclusively for example by police, fire brigade, or military vehicles, would be deployed.
15. If the recharging or refuelling infrastructure is used for both economic and non-economic activities, public funding for its deployment will fall under the State aid rules only insofar as it covers the costs linked to the economic activities in question.<sup>12</sup> In

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<sup>8</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.

<sup>9</sup> See, among others, Commission decision of 10 February 2020, SA.49276 (2019/N) – Romania – Development of a recharging infrastructure for plug-in hybrid and purely electric vehicles.

<sup>10</sup> Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, paragraphs 7 and 8.

<sup>11</sup> See Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (“Notice on the notion of State aid”), OJ C 262, 19.7.2016, p. 1, paragraph 203. See also Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, paragraphs 7 and 8.

<sup>12</sup> Notice on the notion of State aid, paragraph 205.

such cases, Member States must ensure that the public funding provided for the non-economic activities cannot be used to cross-subsidise the beneficiary's economic activities. This can notably be ensured by limiting the public funding only to the non-economic activities, to be identified on the basis of a clear separation of accounts.<sup>13</sup>

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

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

#### B. No State resources

16. Measures that do not involve the transfer of public resources exclude the existence of State aid<sup>14</sup>. For example, a legislative initiative imposing regulatory obligations to deploy recharging or refuelling infrastructure in a certain area, without providing funding for the recharging or refuelling infrastructure's roll out, may not involve State resources<sup>15</sup>.
17. However, based on the Commission's case practice, these types of intervention may not always be sufficient on their own to reach the objective of facilitating the deployment of recharging or refuelling infrastructure and incentivising the uptake of zero- or low-emission vehicles. This may especially be the case where the demand level is not sufficient to cover the additional investment costs without the aid<sup>16</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 area:** *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 scrapping those vehicles, there should not be State aid concerns.*

**Reform 4: Simplify and harmonize permitting procedures for alternative fuels infrastructure:** *This reform will be implemented by a revision of the current legislative framework governing the permitting procedures for roll out of alternative fuels infrastructure, including recharging and refuelling stations alongside the road network and in the building stock. 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*

<sup>13</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. See also Notice on the notion of State aid, paragraph 206.

<sup>14</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>15</sup> Note that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

<sup>16</sup> See, among others, Commission decision of 1 April 2020, SA.54830 (2020/N) – United Kingdom – Scottish ultra-low emission bus (SULEB) scheme, recitals 107 and 108.

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*

18. Measures that are of general application and do not favour certain undertakings, or the production of certain goods, are not selective and do not constitute State aid.
19. This can be the case, for example, of a general tax reform. In such cases, selectivity is normally assessed by means of a three-step analysis<sup>17</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.
20. General measures *prima facie* applicable to all undertakings may be selective where their application involves discretionary powers of the granting authority. This is in particular the case of measures where the criteria for granting the aid are formulated in a very general or vague manner that necessarily involve a margin of discretion in the assessment<sup>18</sup>.
21. In the case of individual measures, the finding of an economic advantage allows to presume selectivity.

*D. No advantage*

*a. Deployment of the recharging or refuelling infrastructure in compliance with the market economy operator test*

22. For a State intervention not to confer an advantage to the beneficiary, the State should act as a market economy operator would do in a similar situation.

*i. No advantage at the level of the owner/developer of the infrastructure*

23. If it is proven that the State acted under the same terms and conditions as a market economy operator in a comparable situation when providing the necessary funding for the development of a recharging or refuelling infrastructure, then State aid is not involved. This can be assessed on the basis of: (i) significant *pari passu* investments of private operators, i.e. investments made on the same terms and conditions (and therefore with the same level of risks and rewards) as the public authorities who are in a comparable situation<sup>19</sup>; and/or (ii) an *ex ante* sound business plan, preferably validated by external experts, demonstrating that the investment provides an adequate return for the investor(s), in line with the normal market return that would be reasonably expected by operators on similar projects taking into account the level of risk<sup>20</sup>.

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<sup>17</sup> Notice on the notion of State aid, section 5.2.3.

<sup>18</sup> Notice on the notion of State aid, section 5.2.2.

<sup>19</sup> For more information, see Notice on the notion of State aid, paragraphs 86 to 88.

<sup>20</sup> For more information, see Notice on the notion of State aid, chapter 4.2 and in particular paragraphs 101 to 105.

24. However, the existence of consecutive State interventions concerning the same recharging or refuelling infrastructure project might invalidate the conclusion that a similar measure would also have been undertaken by a market economy investor<sup>21</sup>.

*ii. No advantage at the level of the operator*

25. Undertakings operating the aided infrastructure to provide services to end-users receive an advantage if the operation of the infrastructure provides them with an economic benefit that they would not have obtained under normal market conditions. This normally applies if what they pay for the right to exploit the recharging or refuelling infrastructure is less than what they would have had to pay for operating a comparable infrastructure under normal market conditions. For instance, in cases where, under normal market conditions, operators would have, to cover their costs, to increase their tariffs/remuneration to a level reducing demand to a non-profitable basis, or would simply not enter the market in the first place, it is considered that the aid confers an advantage on operators by allowing them to offer their services.

26. Where the operation of the recharging or refuelling infrastructure is assigned for a positive price to an operator/concessionaire on the basis of a competitive, transparent, non-discriminatory and unconditional tender<sup>22</sup> in line with the principles of the TFEU on public procurement<sup>23</sup>, an advantage can be excluded at the level of the operator. In such a case, it can be presumed that the fee the operator pays for the right to exploit the recharging or refuelling infrastructure is in line with market conditions. This conclusion does not apply when the competitive bidding process only aims at allocating support to the operator and determining the level of support.

27. If the operator/concessionaire has not been selected through a tender in line with the above conditions, it may also be possible to establish that the fees paid by the operator/concessionaire are in line with normal market conditions through (i) benchmarking with comparable situations<sup>24</sup>, or (ii) on the basis of a generally-accepted standard assessment methodology<sup>25</sup>.

*iii. No advantage at the level of the end-user*

28. If the operator of the recharging or refuelling infrastructure has received State aid or if its resources constitute State resources, it is in a position to grant an economic advantage to the users of the infrastructure, if they are undertakings<sup>26</sup>.

29. An economic advantage at the level of the users can be excluded if (i) the recharging or refuelling infrastructure is not dedicated for the use by a specific user, (ii) all users enjoy equal and non-discriminatory access to the infrastructure, and (iii) the infrastructure pricing policy for users is established on market terms<sup>27</sup>.

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<sup>21</sup> Also see in this respect the Notice on the notion of State aid, paragraph 81.

<sup>22</sup> As described in the Notice on the notion of State aid, paragraphs 89 to 94.

<sup>23</sup> Provided that the appropriate selection criteria as set out in the Notice on the notion of State aid, paragraphs 95 and 96, have been used.

<sup>24</sup> Notice on the notion of State aid, paragraphs 97 to 100.

<sup>25</sup> Notice on the notion of State aid, paragraphs 101 to 105.

<sup>26</sup> Notice on the notion of State aid, paragraph 225.

<sup>27</sup> Notice on the notion of State aid, paragraphs 225 to 228 and section 4.2. Paragraphs 226 to 228 present three scenarios in which an advantage to users can be excluded. First, users do not receive an advantage

b. *Deployment of the infrastructure necessary for the provision of a service of general economic interest (SGEI) in line with the Altmark criteria*

30. Where deploying recharging or refuelling infrastructure is necessary for the discharge of public service obligations that are entrusted as a genuine service of general economic interest (“SGEI”), costs for the deployment of the infrastructure may be regarded as forming part of the overall costs incurred by the undertaking to provide that service<sup>28</sup>. Those costs may therefore be covered by the compensation for the provision of the SGEI.
31. In such cases, the existence of an economic advantage at the level of the operator (*concessionaire*) may be excluded, if four cumulative conditions are met:
- i. the infrastructure project is necessary for the provision of services that can be considered as genuine SGEI for which public service obligations have been clearly defined<sup>29</sup>;
  - ii. the parameters of compensation have been established in advance in an objective and transparent manner;
  - iii. there is no compensation paid beyond the net costs of providing the public service and a reasonable profit; and
  - iv. the SGEI has been either assigned through a public procurement procedure that ensures the provision of the service at the least cost to the community or the compensation does not exceed what an efficient company would require.

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where the fees for use of the infrastructure have been set through a tender that meets all the relevant conditions set out in paragraphs 90 to 96. Second, where such specific evidence is not available, aid to users can be excluded where the terms and condition for use of the infrastructure are in line with those under which the use of comparable infrastructure is granted by comparable private operators in comparable situations (benchmarking), provided such a comparison is possible. Third, if none of the above assessment criteria can be applied, the fact that a transaction is in line with market conditions can be established on the basis of a generally accepted, standard assessment methodology. The Commission considers that the market economy operator test can be satisfied for public funding of open infrastructures not dedicated to any specific user(s) where their users incrementally contribute, from an *ex ante* viewpoint, to the profitability of the project/operator. This is the case where the operator of the infrastructure establishes commercial arrangements with individual users that allow covering all costs stemming from such arrangements, including a reasonable profit margin on the basis of sound medium-term prospect. This assessment should take into account all incremental revenues and expected incremental costs incurred by the operator in relation to the activity of the specific user.

<sup>28</sup> This may be the case, for instance, of an undertaking providing public passenger transport services by bus as a SGEI, which needs to deploy dedicated recharging or refuelling infrastructure necessary for the operation of its buses.

<sup>29</sup> In particular, 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.

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 rules are no hurdle to public service contracts including sustainable mobility services. However, if a running public service contract needs to be amended as a result of this initiative, local authorities will take into consideration the applicable EU framework.*

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

32. Where an aid measure strengthens the competitive position of the benefitting undertakings compared to that of actual or potential competitors that are not eligible for the aid, it is considered to have potentially distorting effects on competition.<sup>30</sup> Undertakings active in the deployment/operation of recharging or refuelling infrastructure are subject to competition within the European Union, and therefore aid to those undertakings threatens to distort competition with other providers of recharging or refuelling services (or other fuel types) that do not benefit from aid. Similarly, where aid is granted for the deployment of dedicated infrastructure, it has the effect of strengthening the position of the beneficiary vis-à-vis its competitors, in all cases where the market in which it operates is open for competition.
33. Aid measures are considered capable of affecting trade between Member States where the aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Union trade.<sup>31</sup> In principle, aid for the deployment of recharging or refuelling infrastructure is capable of affecting trade between Member States, as it concerns a sector where undertakings from any Member State can operate. Service providers that wish to install new recharging or refuelling infrastructure in other Member States where they do not have access to aid will be at a disadvantage when trying to start their operations.
34. However, in very specific circumstances described below, the Commission may find that an aid measure is unlikely to distort competition or affect trade between Member States, in particular in light of the limited amounts of aid. That said, the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected.<sup>32</sup>

*a. De minimis aid*

35. The distortion of competition and effect on trade can be excluded in cases of very limited amounts of aid (“*de minimis* aid”). *De minimis* aid is not considered State aid. Therefore, there is no need for prior approval from the Commission and Member States do not even have to inform the Commission of such aid.
36. 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>33</sup>.

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<sup>30</sup> Notice on the notion of State aid, paragraph 187.

<sup>31</sup> Notice on the notion of State aid, paragraph 190.

<sup>32</sup> Notice on the notion of State aid, paragraph 192.

<sup>33</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.

37. In several cases concerning recharging or refuelling infrastructure<sup>34</sup>, the Commission found that the measures at hand did not constitute State aid as the abovementioned threshold and all other conditions of the *de minimis* Regulation were respected.
38. Where deploying recharging or refuelling infrastructure is necessary for the discharge of public service obligations that are entrusted as a genuine SGEI, costs for the deployment of the infrastructure can be regarded as forming part of the overall costs incurred by the undertaking to provide that service. Those costs may therefore be covered by the compensation paid by the Member State for the provision of the SGEI. Public funding granted for the provision of a SGEI<sup>35</sup> in sectors other than land transport<sup>36</sup> not exceeding EUR 500 000 over three years is not regarded as State aid, provided the other conditions of the SGEI *de minimis* Regulation<sup>37</sup> are also fulfilled.

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

39. There may be instances of support measures that have a purely local impact and consequently have no effect on trade between Member States. However, this may only be the case if (i) the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States; and (ii) it cannot be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishments (i.e., if it is unlikely to have a material bearing on the decision of investors to establish an outlet in the region/Member State in question).<sup>38</sup> While it is not possible to define general categories of measures that typically meet these criteria, the Commission has identified in its Notice on the notion of State aid examples of situations where it found that public support was not liable to affect trade between Member States<sup>39</sup>. The services of DG Competition take the view that the deployment of recharging infrastructure in semi-public areas linked to activities of a local character (e.g., sports and leisure facilities serving predominantly a local audience and unlikely to attract customers or investment from other Member States) may not involve State aid.

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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.

<sup>34</sup> See Commission decision of 22 May 2017, SA.36181 (2016/FC) – The Netherlands – Alleged aid to electric vehicle fast recharge stations.

<sup>35</sup> For instance, compensation granted to an undertaking for the provision of postal services entrusted to it as a SGEI may cover costs for the deployment of dedicated recharging or refuelling infrastructure necessary for its operation, where the Member State concerned imposed the use of zero- or low-emission vehicles for the discharge of the public service obligations.

<sup>36</sup> Please note that Article 106 TFEU, as well as the SGEI *de minimis* Regulation, the SGEI Decision and the SGEI Framework (that are based on Article 106 TFEU) 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.

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

<sup>38</sup> See Judgment of the General Court of 14 May 2019, *Marinvest d.o.o. and Porting d.o.o. v Commission*, Case T-728/17, EU:T:2019:325.

<sup>39</sup> See Notice on the notion of State aid, paragraph 197.

40. In the case of recharging or refuelling infrastructure for public use, evidence to demonstrate that there is no effect on trade could include data showing that there is only limited expected use of the infrastructure from outside a limited area within the Member State and that cross-border investments in the relevant market are minimal or unlikely to be adversely affected.<sup>40</sup> The services of DG Competition would consider that the effect on trade cannot be excluded, in particular for recharging or refuelling infrastructure deployed on/along motorways and main arteries, in major cities, cross-border areas or networks applying to large sections of a country.

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

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

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

42. 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.
43. 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>41</sup>.
44. In any event, full compliance with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility<sup>42</sup> should be ensured (see in particular Article 17(2)).

##### *B. General Block Exemption Regulation (GBER)<sup>43</sup>*

45. In cases where the Commission has gained sufficient experience with a given kind of State aid, it may block exempt it under the GBER, i.e. the Member States do not have to notify such State aid. They only have to inform the Commission thereof.
46. A measure is exempted from notification if it is granted in compliance with the conditions of the GBER<sup>44</sup>. A number of GBER provisions may be applicable to

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<sup>40</sup> See Notice on the notion of State aid, paragraph 210.

<sup>41</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>42</sup> OJ L 57, 18.2.2021, p. 17.

<sup>43</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>44</sup> Compliance with the GBER is established if a measure fulfils the conditions of Chapter 1 of the GBER as well as those set out in the applicable specific provisions.

investments to deploy recharging or refuelling infrastructure, depending on the specific characteristics of the project.

47. **Article 36 GBER**, allowing investment aid up to EUR 15 million enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards, may apply to measures providing support for the development and installation of recharging or refuelling infrastructure for the beneficiary's own use. For a project to be eligible under Article 36 GBER, the aid must be instrumental in reducing the impact that the beneficiary's own activities have on the environment. The infrastructure must therefore be directly related to the exercise of the beneficiary's activities and necessary to achieve an increased level of environmental protection (through the use of zero or low-emission vehicles in carrying out its activities) compared to the situation in the absence of the aid<sup>45</sup>. Semi-public infrastructure used both for the beneficiary's own use and by third parties (e.g., to recharge or refuel the company staff's personal vehicles, customers' vehicles, suppliers' vehicles, etc.) is not eligible for aid under Article 36 GBER. As explained below (see paragraphs 65 and 70), State aid for the deployment of semi-public infrastructure can currently only be declared compatible with the internal market under Article 107(3)(c) TFEU.
48. **Article 56 GBER**, allowing investment aid for local infrastructure up to EUR 10 million of aid and total costs not exceeding EUR 20 million, may also apply, in case a recharging or refuelling infrastructure has a purely local character but its financing constitutes State aid (for instance, because effect on trade cannot be excluded). Aid for the deployment of such infrastructure can be granted under Article 56 GBER only if it is not covered by other GBER provisions (except from infrastructure also covered by Section 1 on regional aid)<sup>46</sup>. Where the aid is granted for a network of recharging infrastructures, it is especially important to ensure that the notification thresholds set out under Article 4 GBER are not circumvented by artificially splitting up the aid schemes or projects<sup>47</sup>.
49. The fact that a scheme applies to projects over the entire territory of a Member State does not automatically mean that individual aid granted under the scheme can never be covered by Article 56 GBER. Indeed, it cannot be excluded that a nation-wide scheme provides, for example, merely a financing facility for individual, local projects, each of which fulfils the conditions of Article 56 GBER (and thus excluding networks of recharging or refuelling infrastructure on motorways). However, a scheme supporting the roll-out of a network of recharging or refuelling infrastructure that covers the entire territory of a Member State or large parts thereof cannot fall under Article 56 GBER.

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<sup>45</sup> This can be the case, for instance, of projects concerning the deployment of recharging or refuelling infrastructure located in depots, parking spaces or other private areas, to which the beneficiary alone has access, and that are necessary to recharge the electric vehicles used for the performance of the beneficiary's economic activities. It must be demonstrated, though, that this recharging infrastructure is instrumental to significantly reducing the impact that the beneficiaries' activities have on the environment. Also, they may not lead to a mere displacement of the pollution to other segments of the economy (in particular the fuel production).

<sup>46</sup> Investment aid for the construction or upgrade of dedicated infrastructure is not exempted under Article 56 GBER as per Article 56(7) GBER.

<sup>47</sup> See Article 4(2) GBER.

50. In addition, investments linked to the ones covered by this guiding template may also be supported under other GBER provisions, in particular Articles 14 (regional investment aid), 17 (investment aid to SMEs) and 21 (risk finance aid) GBER<sup>48,49</sup>. The provisions of Chapter I of the GBER must also be complied with. In particular;
- **Article 14 GBER** allows granting State aid for productive investments of undertakings of all sizes, provided the investments take place in an assisted area. The maximum aid intensities applicable in the assisted areas are established for each Member State in the regional aid maps and can vary across the assisted areas. The eligible costs<sup>50</sup> area investment costs in tangible and intangible assets, estimated wage costs arising from the job creation as a result of the eligible investment or a combination thereof. Maximum aid intensities for large enterprises can go up to 50% in the in the least developed areas. The investment shall be maintained in the recipient area for at least 5 years (3 years if the beneficiary is an SME). Additional bonuses apply for investments by small enterprises (20%) and medium-sized enterprises (10%). Aid for relocation purposes are not covered by the GBER and must be notified.
  - **Article 17 GBER** allows granting State aid to SMEs with a notification threshold of EUR 7.5 million per undertaking per investment project for investments and job creation anywhere in the Union<sup>51</sup>. The maximum aid intensity is 20 % of eligible costs for small enterprises and 10 % for medium-sized enterprises.
  - **Article 21 GBER** allows to support SMEs' access to finance, with no constraints in terms of sectors and regions of activity. In these situations, compatibility requirements include inter alia that eligible SMEs are unlisted and typically operating for less than seven years. In addition, independent private investors should normally provide at least 40% of the total “aided” risk finance investment.

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<sup>48</sup> Also possibly Article 22 GBER (aid for start-ups).

<sup>49</sup> National promotional banks may be used to implement compatible State aid measures (under the GBER or following notification). In general, the activities of such institutions should be limited to address market failures in order to prevent crowding-out of private initiatives.

<sup>50</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>51</sup> Eligible investments are i) setting up a new establishment; ii) extension of an existing establishment iii) diversification of output of existing establishment into new additional products, iii) fundamental change in the overall production process of an existing establishment, or v) acquisition of assets belonging to an establishment on the condition that the establishment has closed down or would have closed down had it not been purchased, the assets are purchased from third parties unrelated to the buyer and the transaction take place under market conditions.

*a. Proposed amendment of the GBER<sup>52</sup>*

51. The Commission services would like to draw the attention of Member States to the recent proposal to amend the GBER<sup>53</sup> to accompany the Multiannual Financial Framework 2021-2027 (“MFF GBER”). As part of the proposed amendments, the Commission envisages to introduce a new provision (**proposed Article 36a GBER**) dedicated to facilitating the granting of State aid for the deployment of publicly accessible recharging or refuelling infrastructure for zero- or low-emission road vehicles. Under this proposed provision, Member States would be able to grant investment aid for the construction and installation of recharging or refuelling infrastructure, providing road vehicles with recharging from renewable electricity and/or refuelling with renewable hydrogen. The aid would be granted as a percentage of the investment costs for the construction and installation of the recharging or refuelling infrastructure.
52. To be exempted from the notification obligation, all the conditions laid down in the proposed Article 36a GBER, in addition to those set out in Chapter I, would need to be complied with. These include: (i) the aid must be granted following a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria; (ii) the investment shall be located in areas where State aid is necessary for deploying recharging or refuelling infrastructure and where no such infrastructure is likely to be developed on commercial terms within a reasonable period of time; (iii) any entrustment to a third party to operate the infrastructure must be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules; and (iv) safeguards must be in place to avoid that the measures enable the creation or strengthening of market power.
53. Measures supporting the deployment of recharging or refuelling infrastructure that do not fulfil the conditions set out in the proposed Article 36a GBER would have to be notified to the Commission. This would be the case, among others, of semi-public infrastructure, which by its own nature is not publicly accessible.
54. The introduction of proposed Article 36a GBER as proposed would affect the applicability of Article 56 GBER to State aid for local recharging or refuelling infrastructure. In particular, considering that Article 56 GBER is applicable only in so far as the infrastructure concerned is not covered by other sections of Chapter III of the GBER (with the exception of Section 1 on regional aid)<sup>54</sup>, Article 56 GBER would not be applicable anymore to local publicly accessible recharging or refuelling infrastructure once the proposed Article 36a GBER would be in force.
55. As part of the MFF GBER, the Commission also proposed to introduce a provision, (**proposed Article 56e (6), letter a)(v) GBER**), allowing aid to the final beneficiary under a financial product supported by the InvestEU Fund, for alternative fuel

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<sup>52</sup> Note that all explanations regarding the changes to the GBER in this guiding template refer to a Commission proposal to amend Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. This proposal has not yet been adopted and may therefore be subject to changes. However, the Commission services understand the interest of Member States in obtaining guidance, even for a text that has not yet been adopted by the Commission. Hence, these explanations do not express an official position of the Commission on this issue, nor do they seek to anticipate the final wording of the amended GBER.

<sup>53</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2494](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2494).

<sup>54</sup> See Article 56(2) GBER.

infrastructure, including recharging and refuelling infrastructure that supply vehicles with renewable electricity and/or renewable hydrogen<sup>55</sup>.

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:** *As regards low emission infrastructures, local managing authorities have various options under the GBER in case aid would be present. For instance, the measure can be immediately implemented without prior notification to the Commission if it respects the GBER provisions for investment aid to increase environmental protection where the infrastructure is dedicated and used by the beneficiaries themselves (e.g. charging points in bus depots). In case of local support, relying on the GBER provisions on investment aid for local infrastructures also appears possible, unless the infrastructure is dedicated to certain identifiable undertakings and tailored to their needs.*

### C. Service of General Economic Interest

56. If the recharging or refuelling infrastructure is necessary for the provision of services that are entrusted as a SGEI and such infrastructure is intended to be used exclusively by the beneficiary, its deployment may be considered as part of the SGEI mission and therefore be financed in compliance with the applicable State aid rules on SGEI. This is the case, in particular, where the Member State concerned imposed the use of zero- or low-emission vehicles for the discharge of the public service obligations. Depending on the sector concerned, compatibility with the internal market of public service compensation qualifying as State aid is assessed under Article 106(2) TFEU or Article 93 TFEU.
57. Member States enjoy a wide discretion in the definition of SGEIs<sup>56</sup>, which can be questioned by the Commission only in the event of manifest error.

#### a. SGEI in the land passenger transport sector: Regulation (EC) No 1370/2007<sup>57</sup>

58. In case public services are entrusted as a SGEI in the area of passenger public transport by road, compensation for those services should be established in line with the provisions of **Regulation (EC) No 1370/2007**, on the basis of Article 93 TFEU<sup>58</sup>. If the recharging or refuelling infrastructure is necessary and intended to be used for the provision of the SGEI<sup>59</sup>, aid for its deployment can be covered by the public service

<sup>55</sup> For aid under Article 56e GBER to be compatible, the conditions laid down in Article 56d GBER should also be complied with, in addition to those set out in Chapter I, and Article 56e GBER itself.

<sup>56</sup> See, among others, Judgment of the Court of First Instance of 15 June 2005, *Olsen v Commission*, case T-17/02, paragraph 216.

<sup>57</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. 13.

<sup>58</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>59</sup> This may be the case, for instance, of an undertaking providing public passenger transport services by bus as a SGEI, which needs to deploy dedicated recharging or refuelling infrastructure necessary for the operation of its own vehicles.

compensation. If the conditions set out in that Regulation are complied with, aid to the service provider in the form of compensation is exempted from prior notification to the Commission.

*b. SGEI Decision*<sup>60</sup>

59. Where the recharging or refuelling infrastructure is necessary to discharge public service obligations in sectors other than land transport (for example, the postal sector), the compatibility of the aid for its deployment may be assessed as part of the public service compensation, on the basis of Article 106(2) TFEU.
60. State aid for the compensation of a 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 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**

61. 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.
62. Depending on whether the recharging or refuelling infrastructure is intended to be kept open for third parties' access or to only serve the needs of the beneficiary for the conduction of its economic activity, investment aid for its deployment may be notified directly under Article 107(3)(c) TFEU or under the Environmental and Energy Aid Guidelines (EEAG)<sup>61</sup>, respectively. If the deployment of recharging or refuelling infrastructure is linked to the discharge of public service obligations in the transport sector entrusted as SGEIs, the SGEI Framework would apply, unless the SGEIs concern land transport services, in which case the Commission will assess the compatibility of the aid under Article 93 TFEU. Finally, support for the deployment of recharging or refuelling infrastructure may be notified to and assessed by the Commission under the Regional aid Guidelines, provided the conditions set out therein are fulfilled.

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<sup>60</sup> Commission Decision 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, 11.1.2012, p. 3.

<sup>61</sup> Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

*A. Procedure for pre-notification and notification*

63. 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.
64. 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.
65. 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*

*a. Article 107(3)(c) TFEU*

66. Where the recharging or refuelling infrastructure is not intended only for the beneficiary’s own use and is, thus, a **publicly accessible recharging or refuelling infrastructure or a semi-public infrastructure**, the compatibility of aid for its deployment is currently assessed directly on the basis of Article 107(3)(c) TFEU. Following the upcoming revision of the EEAG, those guidelines may in the future also cover aid for publicly accessible infrastructure for zero- and low-emission vehicles.
67. 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.
68. To assess whether State aid for recharging or refuelling infrastructure 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).
69. In its compatibility assessment, the Commission will check whether the conditions of Article 107(3)(c) TFEU are met<sup>62</sup>. 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.

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<sup>62</sup> Among others, Commission decision of 18 June 2020, SA.55201 (2019/N) – Germany – Schleswig-Holstein’s programme for e-mobility recharging stations and Commission decision of 10 February 2020, SA.49276 (2019/N) – Romania – Development of a recharging infrastructure for plug-in hybrid and purely electric vehicles.

- 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<sup>63</sup>.
- The Commission will finally balance the positive effects with the negative effects of the aid on competition and trade.

70. Furthermore, the Commission has developed the following criteria in its case practice:

- i. The Commission first examines whether the investment into recharging or refuelling infrastructure facilitates the development of economic activities<sup>64</sup>. Environmental protection requirements are capable of constituting an objective by virtue of which certain State aid measures may be declared compatible with the common market.<sup>65</sup> Hence, the Commission will further examine whether the aid aims at facilitating the development of certain economic activities in a manner that increases the level of environmental protection compared to the level that would be achieved in the absence of the aid. The specific objective of measures supporting the deployment of recharging or refuelling infrastructure is generally the reduction of greenhouse gas emissions<sup>66</sup>. The Commission welcomes such measures in view of the policy ambitions set out in Section 2.1.5 of the European Green Deal Communication. 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. Moreover, providing support for the deployment of recharging and refuelling infrastructure for low-emission vehicles is in line with Directive 2014/94/EU on the deployment of alternative fuels infrastructure ('Alternative Fuels Infrastructure Directive')<sup>67</sup>. The Alternative Fuels Infrastructure Directive requires all Member States to ensure that an appropriate number of recharging or refuelling infrastructure is accessible to the public, in order to ensure that alternative fuelled vehicles can circulate at least in urban/suburban agglomerations and other densely populated areas, and, where appropriate, within networks determined by the Member States.
- ii. As regards the need for State intervention, the State should demonstrate that the deployment of recharging or refuelling infrastructure would not take place on a purely commercial basis, for instance due to the limited number of electric or hydrogen vehicles on the market. Where available, Member States should provide the Commission with studies or other evidence that the infrastructure would not be deployed (or would not be deployed to the same extent) by the

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<sup>63</sup> See also Section 2.1.5 of the Green Deal Communication.

<sup>64</sup> See Judgment of the Court of 22 September 2020, *Austria v Commission*, Case C-594/18 P, EU:C:2020:742, paragraphs 20 and 24.

<sup>65</sup> C-143/99. *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten*, ECLI:EU:C:2001:598, para. 31.

<sup>66</sup> By making it easier to recharge or refuel low-emission vehicles, the deployment of recharging or refuelling stations will make an important contribution towards cutting pollutant emissions (such as NOx or particulate matters), in addition to greenhouse gas emissions.

<sup>67</sup> Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure, OJ L 307, 28.10.2014, p. 1.

market alone. If there are already some measures in place supporting the same objective, the Member State will need to demonstrate that the existing measures have not led to the development of a market-driven sustainable recharging or refuelling infrastructure.

- iii. The Commission then verifies whether the aid is an appropriate instrument to achieve the development of the economic activity at issue in a manner that increases the level of environmental protection. The State 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 emission trading systems where applicable, should be considered, and their current impact explained and compared to the expected effect of the notified aid measure (for example, regulation may be more burdensome).
- iv. The Commission then verifies that the aid has an incentive effect in the sense that it changes the beneficiary's behaviour, i.e. the beneficiary would not invest in the deployment of the recharging infrastructure without the aid. The aid must not subsidise the costs of an activity that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity<sup>68</sup>. The Commission considers that aid does not present an incentive effect for the beneficiary in all cases where work on the project had already started prior to the aid application by the beneficiary to the national authorities. In such cases, where the beneficiary starts implementing a project before applying for aid, any aid granted in respect of that project will not be considered compatible with the internal market.
- v. The Commission then examines if the aid is proportionate, i.e. verifies that it does not exceed the minimum necessary to achieve the objective of developing the economic activities at issue in an environmentally friendly manner. This is typically the case in situations where the aid is granted through a competitive bidding process and the Member State has put in place safeguards to limit the aid to the minimum (for example, a maximum aid amount per recharging station). It cannot be excluded that, even in the absence of a competitive bidding process, the aid may be considered proportionate; however, this will be more probable for lower aid intensities<sup>69</sup>. In some cases, the assessment of proportionality may be more complex<sup>70</sup>.
- vi. The Commission considers that relatively low aid intensities or aid amounts, or the existence of the competitive bidding process, may also contribute to the conclusion that the effects of the measure on competition and trade are limited. The Commission will consider favourably the provision by the notifying Member State of additional safeguards ensuring that the aid will not lead to

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<sup>68</sup> The existence of an incentive effect may be demonstrated in case the insufficient number of electric vehicles on the market would make the development of recharging infrastructure not sufficiently profitable to cover the investment costs in a commercially relevant time frame.

<sup>69</sup> Commission decision of 18 June 2020, SA.55201 (2019/N) – Germany – Schleswig-Holstein's programme for e-mobility recharging stations.

<sup>70</sup> Commission decision of 10 February 2020, SA.49276 (2019/N) – Romania – Development of a recharging infrastructure for plug-in hybrid and purely electric vehicles.

(local) dominant positions, such as for instance a maximum aid amount per beneficiary<sup>71</sup>.

- 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.

*b. Environmental and Energy Aid Guidelines (EEAG)*

71. If the infrastructure is intended for **the beneficiary's own use** (for example, if a delivery company uses the infrastructure to recharge or refuel its service vehicles) and the thresholds applicable under Article 36 GBER are exceeded, aid for its deployment may be found compatible with the internal market under Section 3.2 of the EEAG<sup>72</sup>.
72. The compatibility of State aid for the construction and installation of semi-public infrastructure, instead, cannot be assessed under the current EEAG, as investments into these types of infrastructure are not instrumental to the increase in the level of environmental protection of the beneficiary's own activities. As explained in paragraph 66 above, the Commission currently assesses the compatibility of aid for semi-public recharging or refuelling infrastructure directly under Article 107(3)(c) TFEU.

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:** *As regards low emission infrastructures, local managing authorities have various options under the GBER in case aid would be present. For instance, the measure can be immediately implemented without prior notification to the Commission if it respects the GBER provisions for investment aid to increase environmental protection where the infrastructure is dedicated and used by the beneficiaries themselves (e.g. charging points in bus depots). [...] If the GBER conditions cannot be met, aid will be notified for approval under the TFEU.*

73. When carrying out its compatibility assessment under Section 3.2 of the EEAG, the Commission will take into account the following aspects.
74. First, to be found compatible under the EEAG, environmental aid needs to incentivise undertakings to replace their fossil fuel based vehicles (for instance, diesel buses) with zero- or low-emission vehicles (such as electric or hydrogen vehicles) that provide for

<sup>71</sup> The Commission services take the view that equipment that allows interoperability causes less competition distortions. When setting up and implementing measures concerning the electromobility market, Member States should ensure compliance with Article 33 of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

<sup>72</sup> This can be the case, for instance, of projects concerning the development of refuelling infrastructure located in depots, parking spaces or other private areas, to which only the beneficiary has access, and that are necessary to recharge the hydrogen-fuelled vehicles used for the performance of the beneficiary's economic activities. It must be demonstrated though that this recharging infrastructure is instrumental to significantly reducing the impact that the beneficiaries' activities have on the environment. Also, they may not lead to a mere displacement of the pollution to other segments of the economy (in particular the fuel production). The recharging infrastructure cannot be established alongside roads. If that is the case, it falls outside the scope of the EEAG.

increased environmental protection compared to the level that would be achieved by the Union standards in the absence of State aid. Eligible costs are the extra investments costs necessary to increase the environmental protection beyond the Union standards. These can include costs for the deployment of a dedicated recharging or refuelling infrastructure, in addition to the extra costs of acquiring zero- or low-emission vehicles, compared to vehicles in line with the Union standards (*e.g.*, for buses currently EURO VI standard). Member States should be able to demonstrate that (i) the infrastructure is directly related to the exercise of the beneficiary's activities; and (ii) the fuel or power used to run the vehicles for which the deployment of a recharging or refuelling infrastructure is necessary, is more environmental friendly and allows for increased environmental protection.

75. Second, the aid should be able to bring about a material improvement that the market alone cannot deliver, contributing to developing the economic activities at issue in an environmentally friendly manner.
76. Third, the measure should be an appropriate instrument to achieve such increased economic activity in an environmentally friendly manner. The Member State concerned must demonstrate that: (i) alternative policy options would not be equally suitable to achieve such increased economic activity; and (ii) alternative, less distortive, aid instruments would not deliver equally efficient outcomes<sup>73</sup>.
77. Fourth, the aid should have an incentive effect, i.e. change the beneficiary's behaviour in such a way that it engages in an activity which it would not carry out (or not to the same extent) without the aid<sup>74</sup>.
78. Fifth, when assessing the proportionality of the aid, the Commission verifies that the aid amount per beneficiary is limited to the minimum needed to achieve the objective of the measure to which the aid is targeted, i.e. developing the economic activities at issue in an environmentally friendly manner. Measures that are not subject to an individual assessment are deemed proportionate if the aid amount does not exceed the maximum aid intensities listed in Annex I to the EEAG. Where aid to the beneficiary is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid amount may reach 100 % of the eligible costs.
79. Sixth, the aid should not have an undue negative effect on competition and trade. The aid needs to operate in a fair, open and transparent way<sup>75</sup>.
80. It should be noted that recharging or refuelling infrastructure does not qualify as energy infrastructure within the meaning of the EEAG<sup>76</sup>, therefore section 3.8 thereof does not apply to measures supporting the deployment of recharging infrastructure.

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<sup>73</sup> 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.

<sup>74</sup> A measure may be considered to have an incentive effect when, for instance, it triggers the beneficiary's choice to buy a zero-emission vehicle, which it would not have bought without the aid.

<sup>75</sup> The existence of a competitive bidding process may contribute to the conclusion that the effects of the measure on competition and trade are limited.

<sup>76</sup> See point 19(31) of the EEAG.

*c. SGEI Framework*<sup>77</sup>

81. State aid for the deployment of recharging or refuelling infrastructure which is necessary for the provision of a genuine SGEI in sectors other than the land transport (for instance, the postal sector), may be assessed on the basis of the SGEI Framework, where the public service compensation does not fall within the scope of the SGEI Decision or the SGEI De minimis Regulation.
82. 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 and genuine SGEI, (ii) compliance with Directive 2006/111/EC<sup>78</sup>, (iii) compliance with EU public procurement rules, (iv) absence of discrimination, (v) a mechanism to avoid any overcompensation and (vi) transparency.

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

83. As explained above, Article 106(2) TFEU does not apply to public service compensation in the land transport sector.
84. Therefore, where an undertaking is entrusted with a 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) No 1370/2007. 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*”.
85. The aid must thus be notified to the Commission and can only be granted after authorisation. In accordance with the judgment in *Altmark*, compensation in the land transport sector that does not comply with the provisions of Article 93 TFEU cannot be declared compatible with the Treaty on the basis of Article 106(2) TFEU, or on the basis of any other Treaty provision.

*e. Regional Aid Guidelines (RAG)*<sup>79</sup>

86. Regional investment aid can be granted in almost all sectors of the economy to large companies as well as to SMEs in assisted areas (less developed “a’-areas” and more developed “c areas”), subject to the conditions of the Regional Aid Guidelines. Each Member State has a regional aid map in which the assisted areas are defined. Almost half of the EU is covered by those maps.
87. In ‘a’-areas, regional investment aid can be granted to large enterprises and SMEs not only for investments related to new establishments, but also for investments to extend and/or modernise existing establishments.<sup>80</sup>

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<sup>77</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.

<sup>78</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.

<sup>79</sup> Guidelines on regional State aid for 2014-2020, OJ C 209, 23.07.2013, p. 1.

<sup>80</sup> Eligible investments are i) setting up a new establishment; ii) extension of the capacity, iii) diversification of output of existing establishment into products not previously produced in the establishment or iv) a fundamental change in the production process of an existing establishment, v) acquisition of assets

88. This is also possible for SME's in 'c'-areas. Large enterprises can benefit from regional investment aid in 'c'-areas for their investments relating to new establishments (greenfield investments) and new economic activities (in principle falling into a different class (four-digit numerical code) of the NACE Rev.2 statistical classification of economic activities.
89. Regional investment aid is expressed as a percentage of the total (eligible) cost of an initial investment ('regional aid intensity') and can be granted up to the maximum aid intensity applicable in the respective assisted area. In principle, the less developed the region is, the more regional aid can be granted. For notified aid the Commission would verify whether the aid amount does not exceed the net extra costs of implementing the investment in the area concerned.
90. Member States considering granting regional investment aid for this scale-up initiative can notify the project under the Regional Aid Guidelines. In order to be deemed compatible the aided project must:
- i. contribute to the objective of regional sustainable development (e.g. taking account of direct and indirect jobs created, sustainability (duration) of the investment in the region, spill-over effects on the regions;
  - ii. have an incentive effect (i.e. without the aid the investment would not be sufficiently profitable or would have happened somewhere else in more developed regions or outside the EEA;
  - iii. be limited to the minimum necessary and in any event below the maximum aid intensity for the region; and
  - iv. potential negative effects on competition and trade between Member States need to remain limited (e.g. aid for an undertaking with lower market power is less harmful than for undertakings with significant market share).

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:** *As regards low emission infrastructures, local managing authorities have various options under the GBER in case aid would be present. [...]. In case of local support, relying on the GBER provisions on investment aid for local infrastructures also appears possible, unless the infrastructure is dedicated to certain identifiable undertakings and tailored to their needs. If the GBER conditions cannot be met, aid will be notified for approval under the TFEU.*

*f. Risk Finance Guidelines*<sup>81</sup>

91. Schemes that do not fit under Article 21 GBER may be found compatible with State aid rules, if designed in line with the Risk Finance Guidelines. This implies, inter alia, that a specific market failure as regards access to finance is demonstrated in an ex ante

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belonging to an establishment that has closed down or would have closed down had it not been purchased in the establishment and is bought by investor unrelated to the seller.

<sup>81</sup> Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4.

assessment. In well justified cases, beneficiaries under such schemes could include small- or innovative mid-caps.

92. In as far as financial intermediaries are used in the implementation of a specific measure, it is important to verify that also indirect support to these intermediaries complies with the applicable State aid framework.

## **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 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 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 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.
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- 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.
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- Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.
- Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4.
- 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.