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COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE EVALUATION of the State Aid rules for broadband infrastructure deployment

Delegations will find attached document SWD(2021) 195 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION
of the State Aid rules for broadband infrastructure deployment

{SWD(2021) 194 final}

Context and objectives

High quality electronic communications infrastructure is crucial for connecting and integrating the Union and its remote regions, allowing all users to have access to private and public electronic communications services contributing to social cohesion and supporting a more competitive and sustainable economy. Investments in electronic communications network deployment come primarily from private operators, with public support complementing these private initiatives where necessary. State aid control in the telecommunications sector plays an important role in developing a co-ordinated investment strategy.

The Broadband Guidelines, adopted in 2013,¹ and the relevant provisions of the General Block Exemption Regulation (GBER)², adopted in 2014, set out specific criteria for the allocation of public funds for the pro-competitive infrastructure deployment in areas that need it most. They seek to ensure that public support leads to modern infrastructure increasing consumer welfare and reducing the 'digital divide' where commercial operators do not invest, while avoiding crowding-out of private investments, subsidising local monopolies or discriminating certain technology platforms.

In view of the very rapid technological developments in the electronic communications sector, and challenges that these entail, it has become evident that it is expedient to undertake an evaluation. The evaluation assesses in particular the extent to which the State aid rules for Broadband are still fit for purpose, in view of their objectives and of developments in the market, in order to support the new political objectives of the Commission³, including the Europe fit for the digital age⁴ and the European Green Deal⁵.

This evaluation aims to assess how the Broadband Guidelines and the corresponding provisions of the GBER worked in the past. It establishes what has worked well or less well, and it compares actual performance to earlier expectations. The evaluation examines the application of the Broadband Guidelines and the corresponding provisions of the GBER against five criteria: effectiveness, efficiency, relevance, coherence and EU added value.

The findings will serve as a basis for drawing policy conclusions on how well State aid rules for the deployment of broadband networks have been performing and whether there is a need to make any changes. The evaluation Staff Working Document will feed into the potential revision and update process of the relevant State aid rules.

Several external studies and reports, as well as several public consultation activities support the evaluation. Data sources include the State Aid Scoreboard that comprises aid expenditure reported by Member States. In addition, among others, internal Commission data and DG Competition's case practice support the assessment.

1 Communication from the Commission EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks 2013/C 25/01

2 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 Text with EEA relevance, OJ L 187, 26.6.2014.

3 The Commission published in 2016 the Gigabit Society Communication that sets targets for telecommunications network deployment by 2025 in line with expected use, market and technological developments (see <https://digital-strategy.ec.europa.eu/en/library/communication-connectivity-competitive-digital-single-market-towards-european-gigabit-society>). In March 2021, the Commission presented the EU digital ambitions for Europe's digital transformation by 2030 where connectivity is one of four cardinal points for digital transformation (see https://ec.europa.eu/info/sites/info/files/communication-digital-compass-2030_en.pdf).

4 More information available under: https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_en

5 More information available under: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

Main findings

Overall, the analysis indicates that the State aid rules for the deployment of broadband infrastructure largely meet their triple objective and hence are **effective** as a State aid architecture.

The data reported by the Member States to the WIK report and from the public consultation demonstrate that, compared to the baseline scenario, without the adoption of the 2013 Broadband Guidelines the deployment of broadband networks in line with the EU connectivity targets would have likely been constrained. The Broadband Guidelines fostered the alignment between concepts used for state aid control purposes and their practical implementation by national authorities. Furthermore, the Broadband Guidelines were largely effective in protecting competition in the sector.

The evaluation shows however that there might still be room for a further adjustment of the scope and for further improving the rules in the broadband sector in order to best accompany the necessary investments in the coming years, especially following the experience of the pandemic.

With regard to **efficiency**, the available evidence also suggests that the rules on broadband deployment have clearly led to more efficient State aid expenditure. A majority of respondents consider that the main principles and concepts of the Broadband Guidelines, such as the market failure approach, clawback, the use of existing infrastructure, tendering and public consultation, wholesale access requirements etc. have worked well. Complex and/or large measures with potentially important effects in the market are assessed by the Commission to ensure that their distortive effects are kept to the minimum and are balanced by their positive effects in fulfilling an objective of common interest. As regards the GBER, it has been increasingly and successfully used, ensuring that manifestly compatible measures can be implemented by Member States without prior examination by the Commission. By comparison to the 2009 Broadband Guidelines, the majority of respondents consider that the administrative burden and cost has been reduced. Such cost accounts for 1-2% of allocated aid. National authorities could increase efficiencies by following more good practices (i.e. by exchanging more information among each other).

As to the **relevance** of the rules, the evaluation suggests that the objectives of the rules on broadband deployment have been to a large extent appropriate for meeting the needs within the EU so far. However, they do not seem fully relevant to meet the technological developments in the electronic communications sector and connectivity needs accentuated by the Covid-19 pandemic. The evaluation suggests that State aid rules do not fully reflect more recent EU policy developments and Commission priorities for the future, in particular the updated EU connectivity objectives but also the Green Deal ambitions. The current and expected very high speeds and significant qualitative characteristics of broadband infrastructure are likely to have an impact on the fine balance to be struck between intervening with public funds in order to provide significantly more performant infrastructure to end-users and protecting existing or planned investment. As services develop and are broadly used, the need and demand for high quality broadband infrastructure will rise, fully in line with EU policy objectives for the digital transformation. In this context, it will be important to ensure that State aid guidelines for broadband are fit for purpose and able to cater for current and future technologies and challenges.

As regards **internal coherence**, it appears that the various provisions of the Guidelines or the GBER on broadband deployment are coherent among themselves and operate well together to achieve the objectives.

With regard to **external coherence**, the analysis suggests that the State aid rules on broadband deployment are to a certain extent coherent with other EU policies and legislation. It appears however that the rules do not always reflect more recent legislative developments that occurred after their adoption. In particular, the Broadband Guidelines do not fully mirror certain provisions of the Gigabit Communication, the Broadband Cost Reduction Directive and the European Electronic Communications Code.

Overall, the Broadband Guidelines and corresponding provisions of the GBER have a clear **EU added value** that is acknowledged by stakeholders as they reduce administrative burden and provide clarity, stability and predictability.

The assessment of the current State aid rules for the deployment of broadband networks suggests that, **overall, the rules are fit for purpose**.

However, the evaluation also shows that some targeted adjustments are needed. In particular, the Broadband Guidelines should be adapted to reflect recent legislative developments, current priorities, as well as market and technology developments. The evaluation also indicated room for further clarification of the rules.