

Public consultation on the evaluation of the State aid rules for the deployment of broadband networks

Fields marked with * are mandatory.

Introduction

Although investment in telecommunications network deployment comes mainly from private operators, EU countries also provide public support ('state aid').

EU competition controls play an important role in ensuring this public support does not harm competition (by crowding out private investment, subsidising local monopolies or discriminating against certain technology platforms), while ensuring that public support creates modern infrastructure that reduces the digital divide where commercial operators have no incentives to invest.

The **EU rules** for public spending on the deployment of broadband infrastructure are:

- The 2013 [Broadband Guidelines](#)
- the relevant provisions of the [General Block Exemption Regulation \(GBER\)](#), 2014

Taken together, these EU rules are referred to as 'the state aid rules for the deployment of broadband infrastructure'.

In addition, public support in this sector must be in line with the objectives set out in the:

- [Digital Agenda for Europe \(DAE\)](#) (2010)
- [Gigabit Society Communication](#) (targets added in 2016 for telecoms network deployment by 2025, in line with expected use, market and technological developments).

Note also that investing in connectivity to achieve the 2025 objectives is a prerequisite for the new EU digital strategy, [Shaping Europe's Digital Future](#).

Why are we consulting?

As part of our evaluation of the rules described above, we would like to know your views on whether the rules:

- have stimulated telecommunications infrastructure deployment and boosted competitiveness in the sector
- respond to both technological developments and socio-economic needs
- meet the new EU strategic objectives in [Shaping Europe's Digital Future](#).

Following the evaluation, we may make some changes (legislative or other).

A **summary of our findings** from the consultation will be [published here in Q3/2021](#).

To help us analyse your reply:

- please **keep your answers concise**
- the 'extra comments' box is limited to **3,000 characters** (unless stated otherwise), but you can include **documents** and **URLs** to relevant online content
- although you can respond '*not applicable/no relevant experience or knowledge*' to any question, please **give specific answers as much as possible** (to help us gather solid evidence).

Saving and submitting

If you click '**Save as Draft**' (to break off and finalise your response later), **you must save the link** that you receive from the EUSurvey tool on your computer. Without it, you won't be able to access the draft again.

After submitting your finalised response, you'll be able to **download a copy**.

Questions marked with an asterisk (*) are **mandatory**. To see how we will protect your data, read the attached privacy statement.

Contacts

[Still got questions?](#)

For **technical problems**, please contact our [CENTRAL HELPDESK](#).

You may also contact us via the following functional mail box: COMP-BBGL@ec.europa.eu

Who are we consulting?

The consultation is open to any interested public or private organisation or individual.

We are particularly interested in feedback from bodies with expertise or **experience in the broadband infrastructure sector** (industry, academia, consultancy/law firms, all levels of government and managing authorities managing as well as national regulators applying EU state aid rules).

This general consultation is complemented by the technical questionnaire available on the website of [DG Competition](#).

About you

Language of my contribution

English

I am giving my contribution as

Public authority

First name

Surname

Email

WJZStaatssteun@minezk.nl

Scope

National

Organisation name

The answers to this consultation reflect the informal position of the 'Interdepartementaal Steun Overleg' (ISO) on experiences with and the functioning of the broadband state aid regime . The ISO is a central State aid coordination body composed of representatives of all Dutch ministries and regional and local public authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. It does not express an official and final position of the government of the Netherlands on the broadband state aid regime

Organisation size

Transparency register number

Country of origin

The Netherlands

What is your interest and the main reason for responding?

Not applicable

Please briefly describe your **activities/organisation/company** and (if applicable) the main **goods/services** you provide

Not applicable

What kind of services does your company provide?

Not applicable

What kind of technology does your company use?

Not applicable

Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

Questionnaire

This consultation relates to the EU state aid rules for deploying broadband infrastructure – namely the Broadband Guidelines and the relevant parts of the General Block Exemption Regulation (*unless otherwise specified*).

Section 1 – Effectiveness

To what extent have the rules met their objectives?

1. What is your assessment of state aid policy on broadband infrastructure deployment in general?

Neutral

Please explain

We would like to refer to the attached non paper for our response.

2. To what extent have the Broadband Guidelines achieved the following objectives?

Objective 1. Supporting the rapid deployment of broadband infrastructure, helping reduce the '*digital divide*':

- a. Facilitating the deployment of broadband infrastructures. Partially
- b. Bringing connectivity to low population density, rural and remote areas. Partially
- c. Addressing market failures or major inequalities. Partially
- d. Providing higher quality services at affordable prices. Partially
- e. Supporting investments in line with EU common objectives, as specified in the Digital Agenda connectivity targets for 2020: (i) all Europeans have access to much higher internet speeds of above 30 Mbps and (ii) 50 % or more of European households subscribe to internet connections above 100 Mbps. Partially

Objective 2. Limiting distortion of competition:

- a. Protecting existing investment. Partially
- b. Protecting future investment plans. Partially
- c. Promoting competition in the electronic communication sector for the market (via competitive selection procedures). Partially
- d. Promoting competition in the electronic communication sector in the market (via wholesale access rules). Partially

Objective 3. Transparent decision making

Are the Broadband Guidelines clear? Partially

Do the Broadband Guidelines provide sufficient guidance? Partially

3. To what extent has the General Block Exemption Regulation specifically contributed to the following objectives:

Objective 1. Supporting the rapid deployment of broadband infrastructure, helping reduce the '*digital divide*':

- a. Facilitating the deployment of broadband infrastructures. Partially
- b. Bringing connectivity to low population density, rural and remote areas. Partially
- c. Addressing market failures or major inequalities. Partially
- d. Providing higher quality services at affordable prices. Partially

e. Supporting investments in line with EU common objectives, as specified in the Digital Agenda connectivity targets for 2020: (i) all Europeans have access to much higher internet speeds of above 30 Mbps and (ii) 50 % or more of European households subscribe to internet connections above 100 Mbps. **Partially**

Objective 2. Limiting distortion of competition:

a. Protecting existing investment. **Partially**

b. Protecting future investment plans. **Partially**

c. Promoting competition in the electronic communication sector for the market (via competitive selection procedures). **Partially**

d. Promoting competition in the electronic communication sector in the market (via wholesale access rules). **Partially**

Objective 3. Transparent decision making

Are the rules in the General Block Exemption Regulation clear? **Partially**

Do the rules in the General Block Exemption Regulation give sufficient guidance? **Partially**

4. The General Block Exemption Regulation sets conditions for **aid measures to be exempted from the obligation to be notified** to the Commission. To what extent do you agree with the following statements on those eligibility and compatibility conditions?

The conditions for broadband deployment in the Regulation are appropriate and justified. **Partially**

The conditions for broadband deployment in the Regulation are easy to implement. **Partially**

Please explain and give examples

We would like to refer to the attached non paper for our response.

5. Regarding the different activities listed below, **have you faced any barriers** in deploying broadband infrastructure? They are related to:

1. Administration related to State aid assessment **Not applicable/no relevant experience or knowledge**

2. Administration related to national procedures **yes**

3. Due diligence/feasibility study **no**

4. Designing the deployment & technical assistance **Not applicable/no relevant experience or knowledge**

5. Mapping **yes**

6. Public consultation **yes**

7. Competitive selection process/ Tender **Not applicable/no relevant experience or knowledge**

8. Civil engineering/construction specifications **Not applicable/no relevant experience or knowledge**

9. Rights of way, permits, etc. **Not applicable/no relevant experience or knowledge**

10. Wholesale access products and price specifications **Not applicable/no relevant experience or knowledge**

11. Project management **Not applicable/no relevant experience or knowledge**

12. Information sharing among public administrations **Not applicable/no relevant experience or knowledge**

13. Legal actions/ challenges **Yes**

14. Marketing **Not applicable/no relevant experience or knowledge**

15. Transparency / access to documents Not applicable/no relevant experience or knowledge
16. Other Not applicable/no relevant experience or knowledge

Please explain and give examples The Dutch authorities observe that the central government has a very important role in the guidelines and decisions of the EC and consequently also during the implementation of a State aid measure. This makes it more difficult not only for a local authorities to get approval of the EC for a local support measure, but also for a framework scheme designed for municipalities by the central government to get an approval. Also the State aid regime seems to contain more requirements in practice than would appear in the first instance from the text of the guidelines. The Dutch authorities request the EC to provide more clarity in advance, preferably in the guidelines themselves.

6. Please give a weighting from 1 to 5, depending on the size of the barrier (1 for least obstructive and 5 for most obstructive)

1. Administration related to State aid assessment Not applicable/no relevant experience or knowledge
2. Administration related to national procedures 3
3. Due diligence/feasibility study Not applicable/no relevant experience or knowledge
4. Designing the deployment & technical assistance Not applicable/no relevant experience or knowledge
5. Mapping 4
6. Public consultation 4
7. Competitive selection process/ Tender Not applicable/no relevant experience or knowledge
8. Civil engineering/construction specifications Not applicable/no relevant experience or knowledge
9. Rights of way, permits, etc. Not applicable/no relevant experience or knowledge
10. Wholesale access products and price specifications Not applicable/no relevant experience or knowledge
11. Project management Not applicable/no relevant experience or knowledge
12. Information sharing among public administrations Not applicable/no relevant experience or knowledge
13. Legal actions/ challenges 2
14. Marketing Not applicable/no relevant experience or knowledge
15. Transparency / access to documents Not applicable/no relevant experience or knowledge
16. Other Not applicable/no relevant experience or knowledge

Please explain and give examples

We would like to refer to the attached non paper for our response. The Dutch authorities observe that the central government has a very important role in the guidelines and decisions of the EC and consequently also during the implementation of a State aid measure. This makes it more difficult not only for local authorities to get approval of the EC for a local support measure, but also for a framework scheme designed for municipalities by the central government to get an approval. Also the State aid regime seems to contain more

requirements in practice than would appear in the first instance from the text of the guidelines. The Dutch authorities request the EC to provide more clarity in advance, preferably in the guidelines themselves.

7. Have there been any **unexpected results** after implementing the requirements set by the State aid rules for the deployment of broadband infrastructure?

Not applicable/no relevant experience or knowledge

8. To what extent have the state aid rules for the deployment of broadband infrastructure led to more **effective State expenditure** (better targeted State intervention that delivers the desired objectives) – compared to a situation before entry into force of the Broadband Guidelines in 2013 and General Block Exemption Regulation in 2014.

Not applicable/no relevant experience or knowledge

9. The current General Block Exemption Regulation requires the use of a **transparent and non-discriminatory selection procedure**, precluding a public authority from deploying and managing the network directly (or through a fully-owned entity).
Is it appropriate?

Not applicable/no relevant experience or knowledge

10. Do the provisions of the state aid rules for the deployment of broadband infrastructure concerning requirements for transparency (such as publishing information on the aid on a centralised public website) ensure **adequate access to the information**?

Not applicable/no relevant experience or knowledge

Section 2 – Efficiency

Were the administrative costs involved proportionate to the benefits?

Were the state aid rules more or less efficient than before 2013, a period when support in this sector was regulated only by the [2009 Broadband Guidelines](#) (the Broadband Guidelines and the relevant parts of the General Block Exemption Regulation entered into force in 2013 and 2014, respectively).

Were the costs of complying with the state aid rules proportionate to the benefits of having them?
Have the rules ensured efficient State expenditure?

11. Based on your experience, to what extent have the requirements set by the state aid rules for the deployment of broadband infrastructure led to more efficient **S tate expenditure** (timely and less costly intervention) than in 2009-13, when support in this sector was regulated only by the 2009 Broadband Guidelines)?

Not applicable/no relevant experience or knowledge

12. Can you estimate the **level of the cost generated** by applying the **2013 Broadband Guidelines**?

Not applicable/no relevant experience or knowledge

13. Can you estimate the **level of the cost generated** by the application of the **General Block Exemption Regulation**?

Not applicable/no relevant experience or knowledge

14. To what extent have the **2013 Broadband Guidelines reduced the administrative burden** (compared to 2009-13, when the sector was regulated only by the 2009 Broadband Guidelines)?

Not applicable/no relevant experience or knowledge

15. To what extent have the requirements set by the **2014 General Block Exemption Regulation reduced the administrative burden** (compared to 2009-13, when the sector was regulated only by the 2009 Broadband Guidelines)?

Not applicable/no relevant experience or knowledge

16. **Cost of applying the rules** – do you think that, compared with the [2009 Broadband Guidelines](#), the new **(2013) Broadband Guidelines** have led to:

Not applicable/no relevant experience or knowledge.

17. **Cost of applying the rules** – do you think that, compared to 2009-13 (when the sector was regulated only by the 2009 Broadband Guidelines) the **General Block Exemption Regulation** has led to

Not applicable/no relevant experience or knowledge.

18. Are the parts of the General Block Exemption Regulation related to **notification and evaluation amounts ('thresholds')** adequate for efficient State aid expenditure?

Yes

Section 3 – Relevance

Is EU action still necessary? Are the policy objectives still the right ones?

Are the current EU state aid rules still relevant, given the changes in EU priorities and/or new market and technological developments?

19. How well do the objectives of the state aid rules for the deployment of broadband infrastructure meet the following needs:

- Current EU priorities **Partially**
- Equipping EU society with better internet connections (as laid down in the [Gigabit communication](#)): **all households** should have access to internet connectivity of **at least 100 Mbps download**, upgradable to 1 Gbps **Partially**
- Equipping EU society with better internet connections (as laid down in the [Gigabit communication](#)): **key socioeconomic drivers** such as schools, transport hubs and main providers of public services, as well as digitally intensive companies, should have access to internet connectivity with **download and upload speeds of 1 Gbps** **Partially**
- Equipping EU society with better internet connections (as laid down in the [Gigabit communication](#)): **uninterrupted 5G coverage for all urban areas and major terrestrial transport paths** should be ensured **Partially**
- EU society's connectivity needs revealed by the **COVID-19** crisis **Partially**
- Responding to ongoing **technological developments** in the telecoms sector since 2013 **Partially**
- Responding to ongoing **market developments** in the telecoms sector since 2013 **Partially**

Please explain and give examples

We would like to refer to the attached non paper for our response. The state aid framework can be challenging for local authorities. Even though roll-out of very high capacity networks should be market driven, there could be areas where the market will not deliver and public funding can be necessary to reach the goal of a European Gigabit society. It is therefore important that the guidelines on state aid for broadband are updated to reflect current technologies. The 30 Mbps threshold for white areas is obsolete. While there is no speed threshold as such in the guidelines on state aid for broadband to distinguish white and grey areas, in the decisions of the European Commission on state aid measures of Member States the threshold is set at 30 Mbps. This reflects the goal of Europe's 2020 strategy: access for all to a connection of at least 30 Mbps. New common EU broadband targets have been set for 2025: access for all to a connection of at least 100 Mbps, upgradable to Gigabit speed. This raises the question whether the 30 Mbps

threshold should not be shifted to 100 Mbps. Although state aid for roll out in grey areas is possible following the step change principle (e.g. Bavaria, case number SA.48418), this is a much more complicated and lengthy procedure than state aid for white areas under the General Block Exemption. The step change principle is not clearly defined and therefore difficult to apply.

20. Overall, are there aspects that the state aid rules for the deployment of broadband infrastructure **do not currently cover**, for which extra objectives could be added? (several answers possible)

Not applicable/no relevant experience or knowledge.

Section 4 - Coherence

21. To what extent are the state aid rules for the deployment of broadband infrastructure consistent with EU policy on electronic communications, in particular the following acts:

Gigabit Communication (COM(2016) 587 final **Partially**)

Broadband Cost reduction directive (Directive 2014/61/EU) **Neutral**

European Electronic Communications Code (Directive 2018/1972/EU) **Neutral**

Please explain and give examples

We would like to refer to the attached non paper for our response. The state aid framework can be challenging for local authorities. Even though roll-out of very high capacity networks should be market driven, there could be areas where the market will not deliver and public funding can be necessary to reach the goal of a European Gigabit society. It is therefore important that the guidelines on state aid for broadband are updated to reflect current technologies. The 30 Mbps threshold for white areas is obsolete. While there is no speed threshold as such in the guidelines on state aid for broadband to distinguish white and grey areas, in the decisions of the European Commission on state aid measures of Member States the threshold is set at 30 Mbps. This reflects the goal of Europe's 2020 strategy: access for all to a connection of at least 30 Mbps. New common EU broadband targets have been set for 2025: access for all to a connection of at least 100 Mbps, upgradable to Gigabit speed. This raises the question whether the 30 Mbps threshold should not be shifted to 100 Mbps. Although state aid for roll out in grey areas is possible following the step change principle (e.g. Bavaria, case number SA.48418), this is a much more complicated and lengthy procedure than state aid for white areas under the General Block Exemption. The step change principle is not clearly defined and therefore difficult to apply.

22. Are the state aid rules for the deployment of broadband infrastructure consistent in the following senses?

Consistent with other EU state aid rules? **Partially**

Are the Broadband Guidelines internally consistent (i.e. are there any internal contradictions, etc.?) **Partially**

Is the General Block Exemption Regulation consistent with the Broadband Guidelines? **Partially**

See the answer below question 23

23. To what extent are the rules in the General Block Exemption Regulation consistent with the following acts:

Gigabit Communication (COM (2016) 587 final). **Partially**

Broadband Guidelines (2013/C 25/01) **Neutral**

Please explain and give examples

We would like to refer to the attached non paper for our response.

Section 5 - EU added value

Did EU action – in this case, the EU state aid rules – provide clear added value? How useful were they?

24. Have the state aid rules subject to the current evaluation provided an added value in comparison to a situation without Guidelines and General Block Exemption Regulation, in which case each individual state aid measure would have to be dealt with separately, directly applying the TFEU)?

Neutral

Final comments and document upload

25. Is there anything else you would like to add?

The Dutch authorities observe that the central government has a very important role in the guidelines and decisions of the EC and consequently also during the implementation of a state aid measure. This makes it more difficult not only for local authorities to get approval of the EC for a local support measure, but also for a framework scheme designed for municipalities by the central government to get an approval. In addition to this, the guidelines mention a role for National Competition Authorities. However, not in all Member States, as is the case in the Netherlands, these authorities have competences regarding state aid. The guidelines should take these differences between Member States into account.

You may attach relevant supporting documents to this questionnaire.

Non-paper Evaluation of the functioning of the broadband state aid regime – comments of the Netherlands, January 2021

Can the Commission contact you for further details on the information you have submitted, if required?

Yes

THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE

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