



## **Rail Baltica Global Project Corridor Synergies Study**

Final Report

### **ANNEX 2:SYNERGY COMPONENTS OF CEF AND OTHER DEVELOPMENT PROGRAMMES AND OF THE IMPACT OF STATE AID AND OTHER RULES**

11/04/2022



**Co-financed by the Connecting Europe  
Facility of the European Union**

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## ANNEX 2: SYNERGY COMPONENTS OF CEF AND OTHER DEVELOPMENT PROGRAMMES AND OF THE IMPACT OF STATE AID AND OTHER RULES

### 1 INTRODUCTION

The European Union is looking for synergies between the different Union funds with regard to amplifying the investments and their impact on competitiveness, jobs and growth in the EU, combining different forms of innovation and competitiveness support, or carrying innovative ideas further along the investment cycle or value chain to bring them to the market.

Synergies are about obtaining more impacts on opportunities to co-synchronise relevant infrastructure developments with the delivery of RB by combining EU funds, CEF and other EU instruments in a strategic and also cohesion-oriented manner.

There are different financing sources suitable for financing railway infrastructure itself and the related/surrounding non-railway infrastructure. A variety of them are used in Europe:

- Alternative sources of financing: public funds, grants and granting of credit guarantees
  - EU Funding – Multiannual Framework (2021-2027)
  - NextGenerationEU, with its largest component being the Recovery and Resilience Facility (RRF)
  - CEF 2021-2027
  - National Budget / Resilience and Recovery plans (RRP)
  - EIB as manager of EU Investment initiatives grants
  - others
- Alternative sources of financing: private funds
  - corporate finance: Commercial and IFI's syndicated loans, including EIB, public funding bonds, green bonds
  - private equity funds & PPPs
  - others

European infrastructure policy is supported by a dedicated funding tool, the Connecting Europe Facility (CEF) for transport, energy and digital infrastructures in order to achieve its targets of sustainability, cohesion and economic development for transport.

CEF supports investments that enable the TEN-T objectives: a core network that would consist of nine multimodal core network corridors completed by 2030, an extended core network with deadline of 2040 and a comprehensive network for the purpose of facilitating the accessibility of all European regions that would be put in place by 2050.

The CEF is complemented by the European structural and investment funds (Cohesion Fund and European Fund for Regional Development, mainly grants), the European Fund for Strategic Investment (EFSI, loans and financial instruments) and the European Investment Bank (EIB, standard loans and financial instruments)

Regarding European Strategic Investments programmes, only the CEF, the Cohesion Fund, ERDP Fund, RRF and Invest EU are being analysed in this report.

## 2 EUROPEAN FUNDING PROGRAMMES

The following programmes are an extract of the main funding opportunities financed by the Multiannual Financial Framework 2021-2027 <sup>1</sup> and NextGenerationEU and can contribute to the correct deployment of the Rail Baltica Synergies Global Project proposals.

### 2.1 CONNECTING EUROPE FACILITY (CEF)

CEF 2021-2027 emphasises synergies between the transport, energy and digital sectors and promotes cross-sectoral work in areas such as connected and automated mobility and alternative fuels. The programme also aims to mainstream climate action, considering the EU's long-term de-carbonisation commitments such as the Paris Agreement and "Fit for 55".

**Regulation (EU) 2021/1153<sup>2</sup> establishes the Connecting Europe Facility** (the 'CEF') for the period of the Multiannual Financial Framework (the "MFF") 2021-2027.

As mentioned in **Article 3**:

1. *"The **general objectives** of the CEF are to build, develop, **modernise and complete the trans-European networks in the transport, energy and digital sectors** and to facilitate **cross-border cooperation** in the field of renewable energy, taking into account the long-term de-carbonisation commitments and the goals of increasing European competitiveness; smart, sustainable and inclusive growth; territorial, social and economic cohesion; and the access to and integration of the internal market, with an emphasis on **facilitating the synergies among the transport, energy and digital sectors**."*
2. *The specific objectives of the CEF are:*
  - a) *in the transport sector:*
    - i. *to contribute to the development of projects of common interest relating to efficient, interconnected and multimodal networks and infrastructure for smart, interoperable, sustainable, inclusive, accessible, safe and secure mobility in accordance with the objectives of Regulation (EU) No 1315/2013<sup>3</sup>.*
    - ii. *to adapt parts of the TEN-T for the dual use of the transport infrastructure with a view to improving both civilian and military mobility.*

<sup>1</sup> [https://ec.europa.eu/info/funding-tenders/find-funding/eu-funding-programmes\\_en](https://ec.europa.eu/info/funding-tenders/find-funding/eu-funding-programmes_en)

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1153&qid=1638443530209&from=en>

<sup>3</sup> Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU Text with EEA relevance

- b) *in the energy sector:*
  - i. *to contribute to the development of projects of common interest relating to further integration of an efficient and competitive internal energy market, interoperability of networks across borders and sectors, facilitating de-carbonisation of the economy, promoting energy efficiency and ensuring security of supply.*
  - ii. *to facilitate cross-border cooperation in the area of energy, including renewable energy.*
- c) *in the digital sector: to contribute to the development of projects of common interest relating to the deployment of and access to safe and secure very high-capacity networks, including 5G systems, and to the increased resilience and capacity of digital backbone networks on EU territories by linking them to neighbouring territories, as well as to the digitalisation of transport and energy networks."*

The **budget is depicted in Article 4** in the following way:

1. *"The financial envelope for the implementation of the CEF for the period from 1 January 2021 to 31 December 2027 shall be EUR 33 710 000 000 in current prices.  
In line with the Union objective of mainstreaming climate actions into Union sectoral policies and Union funds, the CEF shall contribute, through its actions, 60 % of its overall financial envelope to climate objectives.*
  2. *The distribution of the amount referred to in paragraph 1 shall be as follows:*
    - a) *EUR 25 807 000 000 for the specific objectives referred to in Article 3(2), point (a), of which:*
      - i. *EUR 12 830 000 000 from the MFF 2021-2027, Heading 1(2), European Strategic Investment.*
      - ii. *(ii) EUR 11 286 000 000 transferred from the Cohesion Fund to be spent in line with this Regulation exclusively in Member States eligible for funding from the Cohesion Fund.*
      - iii. *(iii) EUR 1 691 000 000 from the MFF 2021-2027, Heading 5(13), for the specific objective referred to in Article 3(2), point (a)(ii).*
    - b) *EUR 5 838 000 000 for the specific objectives referred to in Article 3(2), point (b), of which 15 %, subject to market uptake, for cross-border projects in the field of renewable energy, and if the 15 % threshold is reached, the Commission shall increase that threshold up to 20 %, subject to market uptake.*
    - c) *EUR 2 065 000 000 for the specific objectives referred to in Article 3(2), point (c).*
- [...]"*

The **Article 7** includes information about **cross-border projects in the field of renewable energy**:

1. ***"Cross-border projects in the field of renewable energy shall contribute to de-carbonisation, to completing the internal energy market and to enhancing the security of supply. Those projects shall be included in a cooperation agreement or in any other kind of arrangement between two or more Member States or arrangements between one or more Member States and one or more third countries as set out in Articles 8, 9, 11 and 13 of Directive (EU) 2018/2001. Those projects shall meet the objectives, the general criteria and the procedure laid down in Part IV of the Annex to this Regulation.***

2. By 31 December 2021, the Commission shall adopt delegated acts in accordance with Article 26 laying down, without prejudice to the award criteria set out in Article 14, specific selection criteria and the details of the process for selecting the projects. The Commission shall publish the methodologies for assessing the contribution of the project to the general criteria and for producing the cost-benefit analysis specified in Part IV of the Annex.
3. Studies that aim to develop and identify **cross-border projects in the field of renewable energy shall be eligible for funding under this regulation.**
4. Cross-border projects in the field of renewable energy are eligible for Union funding for works if they meet the following additional criteria:
  - a) the project specific **cost-benefit analysis** pursuant to Part IV, point 3, of the Annex is compulsory for all supported projects and takes into account any revenues resulting from support schemes, has been performed in a transparent, comprehensive and complete manner and provides evidence concerning the existence of significant cost savings or benefits, or both, in terms of system integration, environmental sustainability, security of supply or innovation.
  - b) the applicant demonstrates that the project would not materialise in the absence of the grant or that the project cannot be commercially viable in the absence of the grant.
5. The amount of the grant for works shall:
  - a) be proportionate to the cost savings or benefits referred to in Part IV, point 2(b), of the Annex, or both.
  - b) not exceed the amount required to ensure that the project materialises or becomes commercially viable.
  - c) comply with Article 15(3).
6. The CEF shall provide for the possibility of coordinated funding with the enabling framework for renewable energy deployment referred to in Article 3(5) of Directive (EU) 2018/2001 and co-funding with the Union renewable energy financing mechanism referred to in Article 33 of Regulation (EU) 2018/1999.
7. The Commission shall regularly assess the uptake of funds for cross-border projects in the field of renewable energy against the reference amount set out in Article 4(2), point (b), of this Regulation. Following that assessment, in the absence of sufficient market uptake of funds for cross-border projects in the field of renewable energy, the unused budget envisaged for those projects shall be used to meet the objectives of the trans-European energy networks set out in Article 3(2), point (b)(i), of this Regulation for eligible actions referred in Article 9(3) point (a), of this Regulation and, from 2024, may also be used to co-fund the Union renewable energy financing mechanism established under Regulation (EU) 2018/1999.
8. The Commission shall adopt an implementing act, laying down specific rules on co-funding between the parts on cross-border projects in the field of renewable energy under the CEF and the Union



*renewable energy financing mechanism established under Article 33 of Regulation (EU) 2018/1999. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 24(2) of this Regulation.”*

**Article 8** deals with “**Projects of common interest in the area of digital connectivity infrastructure**” as follows:

1. **“Projects of common interest in the area of digital connectivity infrastructure”** are those projects that make an important contribution to the Union’s strategic connectivity objectives and/or **provide the network infrastructure supporting the digital transformation of the economy and society**, as well as the **Union’s Digital Single Market**
2. *Projects of common interest in the area of digital connectivity infrastructure shall meet the following criteria:*
  - a) *the project contributes to the specific objective provided for in Article 3(2), point (c).*
  - b) *the project deploys the best available and best suited technology for that specific project, which proposes the best balance in terms of data flow capacity, transmission security, network resilience, cyber security and cost efficiency.*
3. *Studies that aim to develop and identify projects of common interest in the area of digital connectivity infrastructure shall be eligible for funding under this Regulation.*
4. *Without prejudice to the award criteria laid down in Article 14, priority for funding shall be determined taking into account the following criteria:*
  - a) *actions contributing to deployment of and access to very high capacity networks, including 5G systems and other state of-the-art connectivity, in accordance with Union strategic connectivity targets in **areas where socioeconomic drivers are located** shall be prioritised, taking into account the connectivity needs of those areas and the additional area coverage generated, including for households, in accordance with Part V, point 1, of the Annex; stand-alone deployments to socioeconomic drivers shall be eligible for funding, provided that those deployments are economically proportionate and physically practicable.*
  - b) *actions contributing to the provision of very **high-quality local wireless connectivity in local communities** shall be prioritised in accordance with Part V, point 2, of the Annex.*
  - c) *actions contributing to the deployment of 5G corridors along major transport paths, including on the TEN-T, such as those listed in Part V, point 3, of the Annex, shall be prioritised to ensure coverage along those major transport paths, enabling the uninterrupted provision of synergy digital services, taking into account its socioeconomic relevance relative to any currently installed technological solutions in a forward-looking approach.*
  - d) *projects of common interest which aim to deploy or **significantly upgrade cross-border backbone networks linking the Union to third countries and to reinforce links between electronic communications networks within the Union territory**, including submarine cables, shall be prioritised according to the extent to which they significantly contribute to the increased performance, resilience and very high capacity of those electronic communications networks.*

- e) *projects of common interest deploying operational digital platforms shall prioritise actions based on state-of-the-art technologies, taking into account aspects such as interoperability, cybersecurity, data privacy and re-use.”*

The **eligible actions** are shown in **Article 9**:

1. *“Only actions which contribute to the achievement of the objectives referred to in Article 3, whilst considering long-term decarbonisation commitments, shall be eligible for funding. Such actions include studies, works and other accompanying measures necessary for the management and implementation of the CEF and the sector-specific guidelines. Studies shall be eligible only if they relate to projects eligible under the CEF.*
2. *In the transport sector, only the following actions shall be eligible to receive Union financial support under this Regulation:*
  - a) *actions relating to **efficient, interconnected, interoperable and multimodal networks** for the development of railway, road, inland waterway and maritime infrastructure:*
    - i. *actions implementing the **core network** in accordance with Chapter III of Regulation (EU) No 1315/2013, including actions relating to cross-border links and missing links, such as those listed in Part III of the Annex to this Regulation, as well as urban nodes, multimodal logistics platforms, maritime ports, inland ports, rail-road terminals and connections to airports of the core network as defined in Annex II to Regulation (EU) No 1315/2013; actions implementing the core network may include related elements located on the comprehensive network when necessary to optimise the investment and according to modalities specified in the work programmes referred to in Article 20 of this Regulation.*
    - ii. *actions relating to cross-border links of the comprehensive network in accordance with Chapter II of Regulation (EU) No 1315/2013, such as those listed in Part III, point 2, of the Annex to this Regulation, actions referred to in Part III, point 3, of the Annex to this Regulation, actions relating to studies for the development of the comprehensive network and actions relating to maritime and inland ports of the comprehensive network in accordance with Chapter II of Regulation (EU) No 1315/2013.*
    - iii. *actions to re-establish **missing regional cross-border rail connections on the TEN-T** that have been abandoned or dismantled.*
    - iv. *actions implementing sections of the comprehensive network located in outermost regions in accordance with Chapter II of Regulation (EU) No 1315/2013, including actions relating to the relevant urban nodes, maritime ports, inland ports, rail-road terminals, connections to airports and multimodal logistics platforms, of the comprehensive network as defined in Annex II to Regulation (EU) No 1315/2013.*
    - v. ***actions supporting projects of common interest in order to connect the trans-European network with infrastructure networks of neighbouring countries** as defined in Article 8(1) of Regulation (EU) No 1315/2013.*
  - b) *actions relating to smart, interoperable, sustainable, multimodal, inclusive, accessible, safe and secure **mobility**:*
    - i. *actions supporting motorways of the sea as provided for in Article 21 of Regulation (EU) No 1315/2013 with a focus on cross-border short-sea shipping.*

- ii. *actions supporting telematic applications systems in accordance with Article 31 of Regulation (EU) No 1315/2013, for the respective modes of transport, including in particular:*
      - *for railways: ERTMS.*
      - *for inland waterways: River Information Services (RIS).*
      - *for road transport: Intelligent Transport Systems (ITS).*
      - *for maritime transport: Vessel Traffic Monitoring and Information Systems (VTMIS) and e-Maritime services, including single-window services such as the maritime single window, port community systems and relevant customs information systems.*
      - *for air transport: air traffic management systems, in particular those resulting from the Single European Sky ATM Research (SESAR) system.*
    - iii. *actions supporting sustainable freight transport services in accordance with Article 32 of Regulation (EU) No 1315/2013 and actions to reduce rail freight noise.*
    - iv. *actions supporting new technologies and innovation, including automation, enhanced transport services, **modal integration and alternative fuels infrastructure for all modes of transport in accordance with Article 33 of Regulation (EU) No 1315/2013.***
    - v. ***actions to remove barriers to interoperability as defined in Article 3, point (o), of Regulation (EU) No 1315/2013, notably barriers when delivering corridor/network effects, including actions promoting an increase in rail freight traffic and automatic gauge-change facilities.***
    - vi. *actions to remove barriers to interoperability, in urban nodes within the meaning of Article 30 of Regulation (EU) No 1315/2013.*
    - vii. *actions implementing safe and secure infrastructure and mobility, including road safety, in accordance with Article 34 of Regulation (EU) No 1315/2013.*
    - viii. *actions improving transport infrastructure resilience, in particular its resilience to climate change and natural disasters and to cyber security threats.*
    - ix. *actions improving transport infrastructure accessibility in all modes of transport and for all users, especially users with reduced mobility, in accordance with Article 37 of Regulation (EU) No 1315/2013.*
    - x. ***actions improving transport infrastructure accessibility and availability for security and civil protection purposes** and actions adapting the transport infrastructure for Union external border checks purposes with the aim of facilitating traffic flows.*
  - c) *under the specific objective referred to in Article 3(2), point (a)(ii), and in accordance with Article 12, actions or specific activities within an action, **supporting parts, new or existing, of the TEN-T suitable for military transport, in order to adapt the TEN-T to dual-use infrastructure requirements.***
3. *In the **energy sector**, only the following actions shall be eligible to receive Union financial support under this Regulation:*
- a) *actions relating to projects of common interest as set out at Article 14 of Regulation (EU) No 347/2013.*
  - b) *actions supporting **cross-border projects in the field of renewable energy, including innovative solutions, as well as storage of renewable energy**, and their conception, as defined in Part IV of the Annex, subject to the fulfilment of the conditions laid down in Article 7.*

4. In the **digital sector**, only the following actions shall be eligible to receive Union financial support under this Regulation:
- actions supporting the **deployment of and access to very high-capacity networks, including 5G systems**, capable of providing Gigabit connectivity in areas where socioeconomic drivers are located.
  - actions supporting the provision of very **high-quality local wireless connectivity** in local communities that is free of charge and without discriminatory conditions.
  - actions implementing the **uninterrupted coverage with 5G systems of all major transport paths, including the TEN-T**, such as the actions listed in Part V, point 3, of the Annex.
  - actions supporting the **deployment of new or the significant upgrading of existing backbone networks**, including submarine cables, **within and between Member States and between the Union and third countries**, such as the action listed in Part V, point 3, of the Annex, as well as other actions supporting the deployment of backbone networks referred to in that point.
  - actions implementing **digital connectivity infrastructure requirements related to cross-border projects in the areas of transport or energy or supporting operational digital platforms directly associated to transport or energy infrastructures, or both**.

Article 10 shows the Synergies between the transport, energy and digital sectors:

- Actions contributing **simultaneously to the achievement of one or more objectives of at least two sectors, as provided for in Article 3(2), points (a), (b) and (c)**, shall be eligible to receive Union financial support under this Regulation and to benefit from a higher co-funding rate, in accordance with Article 15. Such actions shall be implemented through **work programmes addressing at least two sectors** and including specific award criteria and shall be financed with budget contributions from the sectors involved.
- Within each of the transport, energy or digital sectors, actions eligible in accordance with Article 9 **may include synergetic elements relating to any of the other sectors**, which are not related to eligible actions provided for in Article 9(2), (3) or (4) respectively, provided that they comply with all of the following requirements:
  - the cost of the synergetic elements does not exceed 20 % of the total eligible costs of the action.**
  - the synergetic elements relate to the transport, energy or digital sector.
  - the synergetic elements enable the socioeconomic, climate or environmental benefits of the action to be significantly improved."**

The **eligible entities** are shown in **Article 11**:

- "As regards entities, the eligibility criteria set out in this Article shall apply in addition to the criteria set out in Article 197 of the Financial Regulation.
- The following entities shall be eligible:
  - legal entities established in:
    - a Member State, including joint ventures.
    - a third country associated to the CEF.

- iii. an overseas country or territory.
  - b) legal entities created under Union law and, if provided for in the work programmes, international organisations.
- 3. Natural persons shall not be eligible.
- 4. The work programmes may provide that legal entities, established in third countries associated to the CEF in accordance with Article 5, and legal entities established in the Union but directly or indirectly controlled by third countries or nationals of third countries or by entities established in third countries, are not eligible to participate in all or some of the actions under the specific objectives set out in Article 3(2), point (c), for duly justified security reasons. In such cases, calls for proposals and calls for tenders shall be restricted to entities established, or deemed to be established, in Member States and directly or indirectly controlled by Member States or by nationals of Member States.
- 5. Legal entities established in a third country which is not associated to the CEF shall exceptionally be eligible to receive Union financial support under the CEF where this is indispensable for the achievement of the objectives of a given project of common interest in the transport, energy and digital sectors or of a cross-border project in the field of renewable energy.
- 6. To be eligible, proposals shall be submitted:
  - a) by one or more Member States; or
  - b) with the agreement of the Member States concerned, by international organisations, joint undertakings, or by public or private undertakings or bodies, including regional or local authorities.

If the Member State concerned does not agree with a submission under point (b) of the first subparagraph, it shall communicate that information accordingly.

A Member State may decide that, for a specific work programme or for specific categories of applications, proposals may be submitted without its agreement. In such case, this shall, at the request of the Member State concerned, be indicated in the relevant work programme and in the call for such proposals.”

**Article 12 describes the specific eligibility rules concerning actions relating to the adaptation of the TEN-T to civilian/defence dual use:**

1. “Actions contributing to the adaptation of the TEN-T core network or comprehensive network as defined by Regulation (EU) No 1315/2013, with the purpose of enabling civilian-defence dual use of the infrastructure, shall be subject to the following additional eligibility rules:
  - a) the proposals shall be submitted by one or more Member States or, with the agreement of the Member States concerned, by legal entities established in Member States.
  - b) the actions shall relate to the sections or nodes identified by Member States in the Annexes to the Military Requirements for Military Mobility within and beyond the EU as adopted by the

Council on 20 November 2018, or any subsequent list adopted thereafter, and to any further indicative list of priority projects that are identified by Member States in accordance with the Military Mobility Action Plan.

- c) **the actions may relate both to the upgrading of existing infrastructure components or to the construction of new infrastructure components** taking into account the infrastructure requirements referred to in paragraph 2 of this Article.
- d) **actions implementing a level of infrastructure requirement going beyond the level required for dual use shall be eligible**; however, their cost shall only be eligible up to the level of costs corresponding to the level of requirements necessary for dual use; **actions relating to infrastructure used only for military purposes shall not be eligible**.
- e) actions under this Article shall only be funded from the amount in accordance with Article 4(2), point (a)(iii), of this Regulation.

2. The Commission shall adopt an implementing act specifying, where necessary, the infrastructure requirements applicable to certain categories of dual-use infrastructure actions and the evaluation procedure regarding the actions connected with dual-use infrastructure actions. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 24(2).
3. Following the interim evaluation of the CEF provided for in Article 23(2), the Commission may propose to the budgetary authority that it transfer the money that has not been committed from Article 4(2), point (a)(iii), to Article 4(2), point (a)(i)."

It must be highlighted that in **Part III of the Annex** it is included as a **cross-border link "Tallinn – Rīga – Kaunas – Warszawa: Rail Baltic new UIC gauge fully interoperable line"** which is the Rail Baltica Global Project itself, converging with all the priorities analysed in the regulation. **Parts IV and V of the Annex also include guidelines related to the energy and digital sectors.**

Additionally, **Commission Implementing Decision on the financing of the Connecting Europe Facility – Digital sector and the adoption of the multiannual work programme for 2021-2025<sup>4</sup>** establishes the implementation of Regulation (EU) 2021/1153 ("CEF Regulation").

**As mentioned in the Commission Implementing Decision section 2.3 Overall approach and expected results:**

*"Based on Articles 8(4) and Article 9(4) of the CEF Regulation, CEF Digital can support the following key topics targeting specific types of deployment projects, namely:*

1. The deployment of and access to **very high-capacity networks, including 5G systems**, capable of providing Gigabit connectivity in areas where socioeconomic drivers are located;

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<sup>4</sup><https://digital-strategy.ec.europa.eu/en/multiannual-work-programme-2021-2025-connecting-europe-facility-digital>



2. Uninterrupted coverage with **5G systems** of all major transport paths, including the **trans-European transport networks**;
3. Deployment of new or significant upgrade of existing **backbone networks** including submarine cables, **within and between Member States** and between the Union and third countries, to the extent to which they significantly contribute to the increased performance, resilience and very high capacity of the electronic communications networks;
4. The implementation of **digital connectivity infrastructures related to cross-border projects in the areas of transport** or energy and/or supporting operational digital platforms directly associated to transport or energy infrastructures.”

As mentioned in the Commission Implementing Decision section 3.1. **5G coverage along transport corridors. 3.1.2 Objectives:**

“CEF Digital will co-fund a set of 5G corridor deployment projects under this work programme. The goal is to leverage the needed private investment in order to establish a full pan-European transport network of 5G corridors by the end of the CEF programme.

CEF Digital will support investments in challenging areas, where market forces alone will not deliver 5G services with the necessary quality of service, **and focus on key European transport paths including**, but not limited to **the indicative list of 5G corridors in the Annex part V of the CEF Regulation**. Additional sections considered relevant from a European perspective are also in scope. The priority for the first three years of this work programme will be to support investment in **cross-border sections involving two or more Member States**, with a co-funding rate of 50%.

[...]

Projects enabling **5G service continuity** over multiple modes of transport, e.g. **road/rail** logistic hubs, inland or sea harbours, inland waterways, or sea waterways between European countries, are in scope.

As mentioned in the Commission Implementing Decision section 3.1.3:

“Funding of sharing models regarding both passive and active infrastructure is encouraged to increase the efficient use of funds provided under this programme. The sharing by network operators of passive, but also active equipment (e.g. through a neutral host model) should aim at substantially reducing network deployment costs and at the same time at facilitating the energy efficient use of resources when deploying and operating the 5G infrastructure.”

## 2.2 EUROPEAN REGIONAL DEVELOPMENT FUND (ERDF) AND COHESION FUND (CF)

CF and ERDF (which, together with the European Social Fund and the Just Transition Fund, constitute the EU's cohesion policy) aim to strengthen the economic, social and territorial cohesion of the Union by promoting sustainable development, particularly of less developed regions.

- European Regional Development Fund (ERDF)

The European Regional Development Fund (ERDF) provides funding to public and private bodies in all EU regions to reduce economic, social and territorial disparities. The fund supports investments through dedicated national or regional programmes.

- Cohesion Fund (CF)

The Cohesion Fund provides Member States with a gross national income (GNI) per capita below 90% of the EU-27 average with support to strengthen the economic, social and territorial cohesion of the EU. The Cohesion Fund supports investments in the field of environment and trans-European networks in the area of transport infrastructure (TEN-T).

For the 2021-2027 period, the Cohesion Fund is eligible for Bulgaria, Czechia, Estonia, Greece, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.

For the 2021 – 2027 period the **scope and the specific objectives** have been established according to **Regulation (EU) 2021/1058** on the European Regional Development Fund and on the Cohesion Fund<sup>5</sup>.

According to **Article 2, the tasks of the ERDF and the Cohesion Fund** are:

*“1. The ERDF and the Cohesion Fund shall contribute to the overall objective of strengthening the economic, social and territorial cohesion of the Union.*

*2. The ERDF shall contribute to reducing disparities between the levels of development of the various regions within the Union, and to reducing the backwardness of the least favoured regions through participation in the structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions, including by promoting sustainable development and addressing environmental challenges.*

*3. The Cohesion Fund shall contribute to projects in the field of environment and trans-European networks in the area of transport infrastructure (TEN-T).”*

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<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1058&from=EN>



Article 3, which describes the main goals of ERDF and CF funds, mentions:

*"[...] (c) a more connected Europe by enhancing mobility (PO 3) by:*

- i. developing a **climate resilient, intelligent, secure, sustainable and intermodal TEN-T**.*
- ii. developing and enhancing sustainable, climate resilient, intelligent and **intermodal national, regional and local mobility, including improved access to TEN-T and cross-border mobility**.*

As in Article 5 the scope of support from the ERDF is:

*"1. The ERDF shall support the following:*

- a) **investments in infrastructure**.*
- b) activities for applied research and innovation, including industrial research, experimental development and feasibility studies.*
- c) investments in access to services.*
- d) **productive investments in SMEs and investments aiming at safeguarding existing jobs and creating new jobs**.*
- e) **equipment, software and intangible assets**.*
- f) networking, cooperation, exchange of experience and activities involving **innovation clusters including between businesses, research organisations and public authorities**.*
- g) information, communication and studies.*
- h) technical assistance.*

Also, as stated in Article 6 the scope of support from the Cohesion Fund is:

*"1. The Cohesion Fund shall support the following:*

- a) investments in the environment, including investments related to sustainable development and **energy presenting environmental benefits, with a particular focus on renewable energy**.*
- b) **investments in TEN-T**.*
- c) technical assistance.*
- d) information, communication, and studies.*

**Member States shall ensure an appropriate balance between investments under points (a) and (b), based on the investment and infrastructure needs specific to each Member State.**

*2. The amount of the Cohesion Fund transferred to the Connecting Europe Facility shall be used for TEN-T projects.*

## 2.3 RECOVERY AND RESILIENCE FACILITY (RRF)

As part of a wide-ranging response, the aim of the RRF is to **mitigate the economic and social impact of the COVID-19 pandemic** and make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions.

**Regulation (EU) 2021/241<sup>6</sup> establishes the Recovery and Resilience Facility**, laying down the objectives of the Facility, its financing, the forms of Union funding under it and the rules for providing such funding.

The **scope of the funding programme is set in Article 3:**

*“The scope of application of the Facility shall refer to policy areas of European relevance structured in six pillars:*

- a) green transition.*
- b) digital transformation.*
- c) smart, sustainable and inclusive growth, including economic cohesion, jobs, productivity, competitiveness, research, development and innovation, and a well-functioning internal market with strong SMEs.*
- d) social and territorial cohesion.*
- e) health, and economic, social and institutional resilience, with the aim of, inter alia, increasing crisis preparedness and crisis response capacity.*
- f) policies for the next generation, children and the youth, such as education and skills.”*

In **Article 4 the general and specific objectives** are further explained:

1. *“In line with the six pillars referred in Article 3 of this Regulation, the coherence and synergies they generate, and in the context of the COVID-19 crisis, the general objective of the Facility shall be to promote the Union’s economic, social and territorial cohesion by improving the resilience, crisis preparedness, adjustment capacity and growth potential of the Member States, by mitigating the social and economic impact of that crisis, in particular on women, by contributing to the implementation of the European Pillar of Social Rights, by supporting the green transition, by contributing to the achievement of the Union’s 2030 climate targets set out in point (11) of Article 2 of Regulation (EU) 2018/1999 and by complying with the objective of EU climate neutrality by 2050 and of the digital transition, thereby contributing to the upward economic and social convergence, restoring and promoting sustainable growth and the integration of the economies of the Union, fostering high quality employment creation, and contributing to the strategic autonomy of the Union alongside an open economy and generating European added value.*
2. *To achieve that general objective, the specific objective of the Facility shall be to provide Member States with financial support with a view to achieving the milestones and targets of reforms and*

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0241&from=EN>

*investments as set out in their recovery and resilience plans. That specific objective shall be pursued in close and transparent cooperation with the Member States concerned.”*

**Resources from the European Union Recovery Instrument** are depicted in Article 6:

1. *“Measures referred to in Article 1 of Regulation (EU) 2020/2094 shall be implemented under the Facility:*
  - a) *through an amount of up to EUR 312 500 000 000 as referred to in point (ii) of Article 2(2)(a) of Regulation (EU) 2020/2094 in 2018 prices, available for non-repayable financial support, subject to Article 3(4) and (7) of Regulation (EU) 2020/2094.*  
*As provided for in Article 3(1) of Regulation (EU) 2020/2094, those amounts shall constitute external assigned revenue for the purpose of Article 21(5) of the Financial Regulation.*
  - b) *through an amount of up to EUR 360 000 000 000 as referred to in point (b) of Article 2(2) of Regulation (EU) 2020/2094 in 2018 prices, available for loan support to Member States pursuant to Articles 14 and 15 of this Regulation, subject to Article 3(5) of Regulation (EU) 2020/2094.*
2. *The amounts referred to in point (a) of paragraph 1 may also cover expenses pertaining to preparatory, monitoring, control, audit and evaluation activities, which are required for the management of the Facility and the achievement of its objectives, in particular studies, meetings of experts, consultation of stakeholders, information and communication actions, including inclusive outreach actions, and corporate communication of the political priorities of the Union, insofar as they are related to the objectives of this Regulation, expenses linked to IT networks focusing on information processing and exchange, corporate information technology tools, and all other technical and administrative assistance expenses incurred by the Commission for the management of the Facility. Expenses may also cover the costs of other supporting activities such as quality control and monitoring of projects on the ground and the costs of peer counselling and experts for the assessment and implementation of reforms and investments.”*

Article 11 states the **maximum financial contribution** as it follows:

1. *“The maximum financial contribution shall be calculated for each Member State as follows:*
  - a) *for 70 % of the amount referred to in point (a) of Article 6(1), converted into current prices, on the basis of the population, the inverse of the GDP per capita and the relative unemployment rate of each Member State as set out in the methodology in Annex II;*
  - b) *for 30 % of the amount referred to in point (a) of Article 6(1), converted into current prices, on the basis of the population, the inverse of the GDP per capita and, in equal proportion, the change in real GDP in 2020 and the aggregated change in real GDP for the period 2020-2021 as set out in the methodology in Annex III. The change in real GDP for 2020 and the aggregated change in real GDP for the period 2020-2021 shall be based on the Commission Autumn 2020 forecasts.*
2. *The calculation of the maximum financial contribution under point (b) of paragraph 1 shall be updated by 30 June 2022 for each Member State by replacing the data from the Commission Autumn 2020*

*forecasts with the actual outturns in relation to the change in real GDP 2020 and the aggregated change in real GDP for the period 2020-2021.”*

#### **Article 12 Allocation of financial contribution**

1. *“Each Member State may submit a request up to its maximum financial contribution, referred to in Article 11, to implement its recovery and resilience plan.*
2. *Until 31 December 2022, the Commission shall make available for allocation 70 % of the amount referred to in point (a) of Article 6(1), converted into current prices.*
3. *From 1 January 2023 until 31 December 2023, the Commission shall make available for allocation 30 % of the amount referred to in point (a) of Article 6(1), converted into current prices.*
4. *The allocations under paragraphs 2 and 3 are without prejudice to Article 6(2).”*

#### **Article 18 presents the funding figure of Recovery and Resilience Plan:**

1. *A Member State wishing to receive a financial contribution in accordance with Article 12 shall submit to the Commission a recovery and resilience plan as defined in Article 17(1).*

2. *After the Commission makes available for allocation the amount referred to in Article 12(3), a Member State may update and submit the recovery and resilience plan referred to in paragraph 1 of this Article to take into account the updated maximum financial contribution calculated in accordance with Article 11(2).*

3. *The recovery and resilience plan presented by the Member State may be submitted in a single integrated document together with the National Reform Programme and shall be officially submitted, as a rule, by 30 April. A draft recovery and resilience plan may be submitted by Member States from 15 October of the preceding year.*

4. *The recovery and resilience plan shall be duly reasoned and substantiated.*

[...]

## 2.4 INVESTEU

With the aim of triggering a new wave of over €372 billion investment in the period 2021-27, the InvestEU Programme intends to boost innovation and job creation in Europe. It will provide and attract long-term funding in line with EU policies and contribute to economic recovery after the COVID-19 pandemic.

InvestEU will leverage substantial private and public funds that are protected through an EU budget guarantee that builds on the successful implementation of the European Fund for Strategic Investments (EFSI).

The InvestEU programme is established by **Regulation (EU) 2021/523<sup>7</sup>**, which sets the ways of Union funding and the rules for providing such funding for the 2021 – 2027 period.

The **Objectives** of the InvestEU programme are mentioned in **Article 3**:

1. *“The general objective of the InvestEU Programme is to support the policy objectives of the Union by means of financing and investment operations that contribute to:*
  - a) the competitiveness of the Union, including research, innovation and digitisation.*
  - b) growth and employment in the Union economy, the sustainability of the Union economy and its environmental and climate dimension contributing to the achievement of the SDGs and the objectives of the Paris Agreement and to the creation of high-quality job.*
  - c) the social resilience, inclusiveness and innovativeness of the Union.*
  - d) the promotion of scientific and technological advances, of culture, education and training.*
  - e) the integration of Union capital markets and the strengthening of the internal market, including solutions to address the fragmentation of Union capital markets, diversify sources of financing for Union enterprises and promote sustainable finance.*
  - f) the promotion of economic, social and territorial cohesion.*
  - g) the sustainable and inclusive recovery of the Union economy after the COVID-19 crisis, including by providing capital support for SMEs that were negatively affected by the COVID-19 crisis and were not already in difficulty in State Aid terms at the end of 2019, upholding and strengthening existing strategic value chains of tangible or intangible assets, developing new ones, and maintaining and reinforcing activities of strategic importance to the Union, including important projects of common European interest, in relation to critical infrastructure, whether physical or virtual, transformative technologies, game-changing innovations and inputs to businesses and consumers and supporting a sustainable transition.*
2. *The InvestEU Programme has the following specific objectives:*
  - a) supporting financing and investment operations related to sustainable infrastructure in the areas referred to in point (a) of Article 8(1).*

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<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0523&from=ES>

- b) supporting financing and investment operations related to research, innovation and digitisation, including support for the scaling up of innovative companies and the rolling out of technologies to market, in the areas referred to in point (b) of Article 8(1).
- c) increasing the access to and the availability of finance for SMEs and for small mid-cap companies and to enhance the global competitiveness of such SMEs.
- d) increasing access to and the availability of microfinance and finance for social enterprises, to support financing and investment operations related to social investment, competences and skills, and to develop and consolidate social investment markets, in the areas referred to in point (d) of Article 8(1)."

**The budget and amount of the EU Guarantee is further explained in Article 4:**

1. *"The EU guarantee for the purposes of the EU compartment referred to in point (a) of Article 9(1) shall be EUR 26 152 310 073. It shall be provisioned at the rate of 40 %. The amount referred to in point (a) of the first subparagraph of Article 35(3) shall be also taken into account for contributing to the provisioning resulting from that provisioning rate.*

*An additional amount of the EU guarantee may be provided for the purposes of the Member State compartment referred to in point (b) of Article 9(1) of this Regulation, subject to the allocation by Member States, pursuant to the provisions on the use of the ERDF, the ESF+, the Cohesion Fund and the EMFAF delivered through the InvestEU Programme laid down in a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the instrument for financial support for border management and visa (the 'Common Provisions Regulation for 2021-2027') and the provisions on the use of the EAFRD delivered through the InvestEU Programme laid down in the CAP Strategic Plans Regulation, of the corresponding amounts.*

*An additional amount of the EU guarantee may also be provided in the form of cash or guarantee by Member States for the purposes of the Member State compartment. The amount provided in cash shall constitute an external assigned revenue in accordance with the second sentence of Article 21(5) of the Financial Regulation.*

*The contributions from third countries referred to in Article 5 of this Regulation shall also increase the EU guarantee referred to in the first subparagraph, providing a provisioning in cash in full in accordance with Article 218(2) of the Financial Regulation.*

2. *An amount of EUR 14 825 000 000 in current prices of the amount referred to in the first subparagraph of paragraph 1 of this Article shall be allocated for operations implementing measures referred to in Article 1 of Regulation (EU) 2020/2094 for the objectives referred to in Article 3(2) of this Regulation.*

*An amount of EUR 11 327 310 073 in current prices of the amount referred to in the first subparagraph of paragraph 1 of this Article shall be allocated for the objectives referred to in Article 3(2).*

*The amounts referred to in the first subparagraph of this paragraph shall only be available as of the date referred to in Article 3(3) of Regulation (EU) 2020/2094.*

*The indicative distribution of the EU guarantee for the purposes of the EU compartment is set out in Annex I to this Regulation. Where appropriate, the Commission may depart from the amounts*

*referred to in Annex I by up to 15 % for each objective referred to in points (a) to (d) of Article 3(2). The Commission shall inform the European Parliament and the Council of any such departure.*

3. *The financial envelope for the implementation of the measures provided in Chapters VI and VII shall be EUR 430 000 000 in current prices.*
4. *The amount referred to in paragraph 3 may also be used for technical and administrative assistance for the implementation of the InvestEU Programme, such as preparatory, monitoring, control, audit and evaluation activities, including for corporate information technology systems.*

**Article 6 explains the implementation and ways of Union funding:**

1. *“The EU guarantee shall be implemented in indirect management with bodies referred to in points (c)(ii), (c)(iii), (c)(v) and (c)(vi) of Article 62(1) of the Financial Regulation. Other forms of Union funding under this Regulation shall be implemented in direct or indirect management in accordance with the Financial Regulation, including grants implemented in accordance with Title VIII of the Financial Regulation and blending operations implemented in accordance with this Article as smoothly as possible, in a manner that ensures efficient and coherent support for Union policies.*
2. *Financing and investment operations covered by the EU guarantee which form part of the blending operation combining support under this Regulation with support provided under one or more other Union programmes or covered by the EU ETS Innovation Fund shall:*
  - a) *be consistent with the policy objectives and comply with the eligibility criteria set out in the rules of the Union programme under which the support is decided.*
  - b) *comply with this Regulation.*
3. *Blending operations that include a financial instrument that is fully financed by other Union programmes or by the EU ETS Innovation Fund without the use of the EU guarantee under this Regulation shall be consistent with the policy objectives and comply with the eligibility criteria set out in the rules of the Union programme under which the support is provided.*
4. *In accordance with paragraph 2 of this Article, the non-repayable forms of support and financial instruments from the Union budget forming part of the blending operation referred to in paragraphs 2 and 3 of this Article shall be decided under the rules of the relevant Union programme and shall be implemented within the blending operation in accordance with this Regulation and with Title X of the Financial Regulation.*

*The reporting relating to such blending operations shall also cover their consistency with the policy objectives and eligibility criteria set out in the rules of the Union programme under which the support is decided as well as their compliance with this Regulation.”*

The **policy windows** are depicted in **Article 8 of** as it follows:



1. *“The InvestEU Fund shall operate through the following four policy windows that shall address market failures or suboptimal investment situations within their specific scope:*
  - a) *a sustainable infrastructure policy window which comprises sustainable investment in the areas of transport, including multimodal transport, road safety, including in accordance with the Union objective of eliminating fatal road accidents and serious injuries by 2050, the renewal and maintenance of rail and road infrastructure, energy, in particular renewable energy, energy efficiency in accordance with the 2030 energy framework, buildings renovation projects focused on energy savings and the integration of buildings into a connected energy, storage, digital and transport systems, improving interconnection levels, digital connectivity and access, including in rural areas, supply and processing of raw materials, space, oceans, water, including inland waterways, waste management in accordance with the waste hierarchy and the circular economy, nature and other environment infrastructure, cultural heritage, tourism, equipment, mobile assets and the deployment of innovative technologies that contribute to the environmental or climate resilience or social sustainability objectives of the Union and that meet the environmental or social sustainability standards of the Union.*
  - b) *a research, innovation and digitisation policy window which comprises research, product development and innovation activities, the transfer of technologies and research results to the market to support market enablers and cooperation between enterprises, the demonstration and deployment of innovative solutions and support for the scaling up of innovative companies, as well as digitisation of Union industry.*
  - c) *an SME policy window which comprises access to and the availability of finance primarily for SMEs, including for innovative SMEs and SMEs operating in the cultural and creative sectors, as well as for small mid-cap companies.*
  - d) *a social investment and skills policy window, which comprises microfinance, social enterprise finance, social economy and measures to promote gender equality, skills, education, training and related services, social infrastructure, including health and educational infrastructure and social and student housing, social innovation, health and long-term care, inclusion and accessibility, cultural and creative activities with a social goal, and the integration of vulnerable people, including third country nationals.*

*[...]”*

As shown in **Article 9 the compartments** are:

1. *“The policy windows referred to in Article 8(1) shall consist of an EU compartment and a Member State compartment. Those compartments shall address market failures or suboptimal investment situations as follows:*
  - a) *the EU compartment shall address any of the following situations:*
    - i. *market failures or suboptimal investment situations related to Union policy priorities.*
    - ii. *Union-wide or Member State specific market failures or suboptimal investment situations.*
    - iii. *market failures or suboptimal investment situations, which require the development of innovative financial solutions and market structures, in particular new or complex market failures or suboptimal investment situations.*
  - b) *the Member State compartment shall address specific market failures or suboptimal investment situations in one or several regions or Member States to deliver the policy objectives of the contributing funds under shared management or of the additional amount provided by a Member*



*State under the third subparagraph of Article 4(1), in particular to strengthen economic, social and territorial cohesion in the Union by addressing imbalances between its regions.*

2. *Where appropriate, the compartments referred to in paragraph 1 shall be used in a complementary manner to support a given financing or investment operation, including by combining support from both compartments.”*

The **eligible financing and investment operations** are depicted in Article 14:

1. *“The InvestEU Fund shall only support financing and investment operations that:*
  - a) *comply with the conditions set out in points (a) to (e) of Article 209(2) of the Financial Regulation, in particular regarding market failures, suboptimal investment situations and additionality as set out in points (a) and (b) of Article 209(2) of the Financial Regulation and in Annex V to this Regulation and, where appropriate, maximising private investment in accordance with point (d) of Article 209(2) of the Financial Regulation.*
  - b) *contribute to the Union policy objectives and fall within the scope of the areas eligible for financing and investment operations under the appropriate policy window in accordance with Annex II to this Regulation.*
  - c) *do not provide financial support to the excluded activities set out in Section B of Annex V to this Regulation.*
  - d) *are consistent with the investment guidelines.*
2. *In addition to projects situated in the Union, or in an overseas country or territory linked to a Member State as set out in Annex II to the TFEU, the InvestEU Fund may support the following projects and operations through financing and investment operations:*
  - a) *projects involving entities located or established in one or more Member States that extend to one or more third countries, including acceding countries, candidate countries and potential candidates, countries falling within the scope of the European Neighbourhood Policy, the EEA or the EFTA, to an overseas country or territory as set out in Annex II to the TFEU, or to an associated third country, regardless of whether there is a partner in those third countries or overseas countries or territories;*
  - b) *financing and investment operations in third countries as referred to in Article 5 which have contributed to a specific financial product.*
3. *The InvestEU Fund may support financing and investment operations that provide finance to final recipients which are legal entities established in any of the following countries or territories:*
  - a) *a Member State or an overseas country or territory linked to a Member State as set out in Annex II to the TFEU.*
  - b) *a third country associated to the InvestEU Programme in accordance with Article 5.*
  - c) *a third country referred to in point (a) of paragraph 2, where applicable.*
  - d) *other third countries, where necessary for the financing of a project in a country or territory referred to in points (a), (b) or (c).”*

### 3 IMPACT OF STATE AID AND OTHER RULES FOR SYNERGISTIC OPPORTUNITIES

After this critical analysis of the synergy components of the Connecting Europe Facility and other national and European development programmes this chapter analyses the impact of State Aid and other rules for the synergistic opportunities proposed.

The particularities of the norms defining State Aid compatible with the EU regulation of the internal market in the Information Communication Technologies (ICT), the Electronic Communications and the Energy sectors are discussed in the final subsections of this paragraph.

#### 3.1 STATE AID AS A REGULATORY CONCEPT IN ACQUIS COMMUNITAIRE

The *Treaty on the Functioning of the European Union* (TFEU) ensures in its article 107 that aid granted through State resources cannot distort competition and trade in the EU by benefiting certain companies or the production of certain goods. State Aid that represents an advantage in any form conferred by national public authorities to undertakings on a selective basis are therefore not admitted while subsidies granted to individuals or general measures open to all enterprises are not affected by this prohibition.

The general prohibition contained in the TFEU regarding State Aid is, therefore, complemented in EU law by rules identifying the circumstances under which, if it is focused on supporting a number of policy objectives, it may be considered to be compatible with the internal market.

These exceptions are referred to in article 107 of the TFEU as:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest
- (e) other categories of aids as may be specified by decision of the Council on a proposal from the Commission

The underlined references in article 107 of the TFEU regarding the particular circumstances of regions where economic development and the standard of living are very low and the facilitation of the development of economic activities in specific areas are envisaged as the *possible rationale regarding the RB synergistic opportunities granting process*.

**EU State Aid control requires prior notification of all new aid measures to the Commission. Member States must await the Commission's decision before they can put the measure into effect.**

There are a few **exceptions** to mandatory notification, for example:

- aid covered by a block exemption
- *de minimis* aid that among others, does not exceed €200,000 per undertaking over a period of three fiscal years
- aid granted under an aid scheme already authorised by the Commission

In any case, it must be ensured that the aid does not distort competition and affect the trade between Member States. Therefore, the Commission, responsible for enforcing the EU State Aid rules, has defined the procedures for exception approvals:

- EU State Aid control requires prior notification of all new aid measures to the Commission
- Each notification triggers a preliminary investigation by the Commission
- For certain categories of aid and only if all conditions are met, the Commission must adopt a short-form approval decision
- In cases of unlawful aid granted without prior authorisation, the Commission must examine all information in a preliminary investigation and if there are doubts as to the compatibility of the measure, an in-depth investigation must be carried out
- The Commission adopts a final decision at the end of the formal investigation. There are mainly three possible outcomes:
  - o positive decision: the measure is not considered State Aid or the aid is compatible with the internal market
  - o conditional decision: the measure is found compatible, but its implementation is subject to the conditions stated in the decision.
  - o negative decision: the measure is incompatible and cannot be implemented. The Commission in principle orders the Member State to recover aid that has already been paid out.
- The Commission may conduct investigations where it suspects that State Aid given to a particular sector of the economy distorts competition.

**Aid measures can only be implemented after approval by the Commission.** The Commission also has the power to require a Member State to pay back incompatible State Aid.

Under Article 6 of Commission Regulation (EC) 794/2004, **the European Commission must publish, annually, a State Aid synopsis** ("State Aid Scoreboard" or "Scoreboard") based on the expenditure reports provided by Member States.

**The Scoreboard is the European Commission's benchmarking instrument for State Aid.** It was launched in July 2001 to provide a transparent and publicly accessible source of information on the overall State Aid situation in the Member States and on the Commission's State Aid control activities.

State Aid control prevents crowding out of private investment, boosts leverage of these investments, prevents waste of public resources and limits distortions of competition. State Aid rules also ensure that subsidy races are avoided within the internal market. The key issue is that public support (State Aid) must be designed to target and address areas with sub-optimal investment situations. This approach is pursued in order to avoid duplicating or crowding out private financing and thus providing a clear European added value.

State Aid Legislation covers a wide range of regulations and rules that are published on the website of the Commission's Directorate General for Competition<sup>8</sup>.

The Commission has reviewed and amended the regulatory framework in order to adapt regulations to contribute to the achievement of its policy goals in every sector and to give support to technological and economic evolution in different periods of time.

The particular conditions arisen as a consequence of the COVID-19 pandemic begin with the sixth amendment of the State Aid Temporary Framework. They are aimed to enable Member States to provide targeted support to companies during the coronavirus crisis. Furthermore, the Commission is currently pursuing a review of tools to make sure all competition instruments (merger, antitrust and State Aid control) remain fit for purpose.

It sets the path for a progressive phase-out of crisis measures, while avoiding “cliff-edge” effects, and accompanies the recovery with new tools to kick-start and crowd-in private investment in the recovery phase. To illustrate this by way of a few examples mentioned in the communication<sup>9</sup>, have been selected the following references:

- To contribute to the green transition, the upcoming climate, environmental protection and energy aid guidelines aim at supporting industry's efforts towards de-carbonisation, circularity and biodiversity, as well as clean or zero-emission mobility and the energy efficiency of buildings.
- To contribute to the digital transition, the upcoming broadband state aid guidelines aim to foster digital infrastructure development by facilitating the deployment and take-up of broadband networks which respond to fast-evolving user needs.
- The Commission will continue to support ongoing Member State efforts to design pan-European Important Projects of Common European Interest (IPCEI) that jointly overcome market failures by enabling breakthrough innovation and infrastructure investments in key green and digital priorities,

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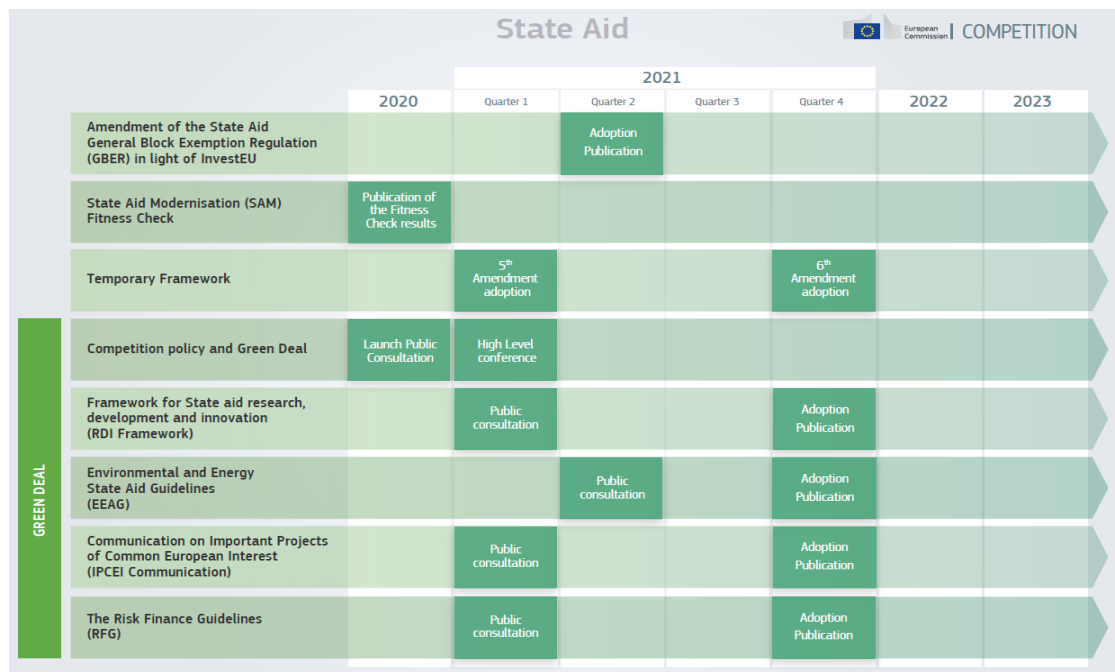
<sup>8</sup> [https://ec.europa.eu/competition-policy/state-aid/legislation\\_en](https://ec.europa.eu/competition-policy/state-aid/legislation_en)

<sup>9</sup> [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2021\)713&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2021)713&lang=en)

such as hydrogen, cloud, health and microelectronics. The upcoming IPCEI State Aid Communication will further enhance the openness of IPCEIs, facilitate the participation of SMEs and clarify the criteria to pool national and EU resources.

The schedule foreseen by the Commission for the revision of the regulations regarding State Aid<sup>10</sup> is reproduced in the following images.

**Figure 1: Schedule for the Revision of the Regulations Regarding State Aid (European Commission)**



<sup>10</sup> [https://ec.europa.eu/competition-policy/system/files/2021-11/timeline\\_policy\\_review\\_state-aid.pdf](https://ec.europa.eu/competition-policy/system/files/2021-11/timeline_policy_review_state-aid.pdf)

		2021				2022	2023
		2020	Quarter 1	Quarter 2	Quarter 3	Quarter 4	
GREEN DEAL	Regional Aid Guidelines (RAG)			Adoption Publication			
	Amendment of the State Aid Block Exemption Regulation (GBER) in light of the Green Deal			Public consultation		Adoption Publication	
	Broadband Guidelines				Publication evaluation results	Public consultation	Adoption Publication
	Services of General Economic Interest (SGEI) – health and social services					Publication evaluation results	
	Fisheries guidelines, Block Exemption Regulation (FIBER) and Regulation on <i>de minimis</i>					Public consultation Adoption	
	Aid to the Agricultural and Forestry Sectors and in Rural Areas (AGRI GL) and Agricultural Block Exemption Regulation (ABER)					Public consultation Adoption	
	Foreign Subsidies			Adoption			
	Short-term export credit insurance communication (STEC)					Adoption Publication	

Source: Iberdrola

Regarding **multi-country project funds** from a centrally managed Union programme may be combined with resources committed by Member States, including contributions from the Recovery and Resilience Facility, the Digital Europe Programme, the Connecting Europe Facility, the InvestEU Programme, Horizon Europe, as well as the European Regional Development and the Cohesion funds. Apart from European funds, member States can contribute to multi-country projects from their regional or national budgets. The European Investment Bank (EIB) and other entities, whether public or private, may contribute to multi-country projects where appropriate. However, when financial resources are State Aid measures, State Aid rules apply.

As identified by EU regulation, State Aid control prevents the distortions of competition, aims to boost private investment, uplifts the leverage of these investments, aims to stop the waste of public resources, and limits. State Aid rules also ensure that subsidy races are avoided within the internal market. The key issue for multi-country projects with public funding is that they must be designed to target and address areas with sub-optimal investment situations. This is the approach to be adopted, in order to avoid duplicating or crowding out private financing and thus providing a clear European added value.

### 3.2 STATE AID GUIDING TEMPLATES TO ASSIST THE DESIGN OF NATIONAL PLANS UNDER THE RRF

The outbreak of the COVID-19 pandemic has a significant economic impact. Member States have implemented support measures for citizens or companies. Some of these support measures may entail State Aid within the meaning of Article 107(1) TFEU.

DG Competition has published State Aid guiding templates<sup>11</sup> to support Member States in the design of their national plans under the RRF, where all reforms and investments have to be implemented within a tight time frame, as the Regulation on the RRF foresees, they have to be completed by August 2026.

### 3.2.1 ESTONIA'S RECOVERY AND RESILIENCE PLAN

The plan consists of 25 investments and 16 reforms. They will be supported by €969.3 million in grants. 41.5% of the plan will support climate objectives and 21.5% of the plan will foster the digital transition.

The impact of Estonia's plan is the result of a strong combination of reforms and investments which address the specific challenges of Estonia. Key area of the plan are the green and digital transitions, with measures to improve energy efficiency and develop renewable energy; increase the sustainability of transport and mobility; support companies in the twin transition, in particular start-ups and small and medium-sized enterprises; further digitalisation of public services; and increase the labour market relevance of the education and training system, notably as regards green and digital skills. The plan contains measures to improve the accessibility and resilience of the health system and envisages some improvements to the social safety net and access to social services. Equal opportunities and social and territorial cohesion are important cross-cutting themes in the plan.

### 3.2.2 LATVIA'S RECOVERY AND RESILIENCE PLAN

The plan consists of 60 investments and 25 reforms. They will be supported by € 1.8 billion in grants; 38% of the plan will support climate objectives and 21% of the plan will support the digital transition.

The impact of Latvia's plan is the result of a strong combination of reforms and investments which address the specific challenges of the country. The reforms address bottlenecks to lasting and sustainable growth, while investments are targeted to the green and digital transitions, social inclusion, including healthcare, the social safety net and regional disparities. Measures also focus on skills, such as digital skills, adult learning, and higher education, productivity, including research and innovation and support for business investments. Some reforms also seek to improve administrative capacity, including tax administration, public procurement and the judicial system.

### 3.2.3 LITHUANIA'S RECOVERY AND RESILIENCE PLAN

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<sup>11</sup> [https://ec.europa.eu/competition-policy/state-aid/coronavirus/rrf-guiding-templates\\_en](https://ec.europa.eu/competition-policy/state-aid/coronavirus/rrf-guiding-templates_en)

To this end, the plan consists of 30 measures, covering investments and reforms. They will be supported by € 2.22 billion in grants; 37.8% of the plan will support climate objectives and 31.5% of the plan will foster the digital transition.

The transformative impact of Lithuania's plan is the result of a strong combination of reforms and investments which address the specific challenges of Lithuania. The reforms address bottlenecks to lasting and sustainable growth, while investments are targeted to address common European challenges by embracing the green and digital transition, to strengthen economic and social resilience and the cohesion of the single market. In particular, Lithuania's plan will accelerate reforms and investments in the education, as well as the healthcare sector. The plan will also invest in more sustainable power generation and energy storage, promote green mobility, facilitate the 5G rollout and strengthen social protection.



### 3.3 STATE AID IN THE RAILWAY TRANSPORT SECTOR

As mentioned before, State Aid control should target sustainable growth-enhancing policies while encouraging budgetary consolidation, limiting distortions of competition and keeping the single market open.

#### 3.3.1 STATE AID FOR RAILWAY BRANCH TO INDUSTRIAL AREAS AND AUTOMATIC GAUGE-CHANGE FACILITIES

The financial help for the building of a railway branch to provide railway access to an industrial area does not belong to the State Aid category, mainly because the ownership of the branch falls under the state, a natural monopoly aiming to provide infrastructure for the establishment of freight rail services. The installation of automatic gauge-change facilities also does not fall under the State Aid category.

Freight rail services can be financed through State Aid as analysed in the following chapter.

#### 3.3.2 STATE AID FOR RAILWAY UNDERTAKINGS

The operation of rail freight services is open to all companies in the European territory, under certain circumstances such as railway license and security certificate among others, so any financial aid coming from the state falls under the State Aid category.

It shall be highlighted a special form of **State Aid related with rail transport in the EU**, where the main funding programmes are the following:

- SA.58046 - Supporting rail freight transport in Germany
- SA.57886 - Environmental compensation for rail freight transport in Sweden
- SA.57809 - Prolongation and amendment of the scheme for the support of ERTMS equipment in Denmark
- SA.56718 - Incentives for rail transport in Italy
- SA.55451 - Support for ERTMS-upgrade in the Netherlands
- SA.51613 - Combined transport aid scheme for Luxembourg 2019-2022
- SA.52828 - Incentive scheme for combined cargo transport in Croatia
- SA.55451 - State Aid: Commission approves over €22 million of public support to promote rail transport operability in the Netherlands

### 3.4 STATE AID ASSESSMENT FOR FUNDS FROM EUROPEAN FUNDING PROGRAMMES

The CEF Annex of the Annex 2021-2025 Work Programme<sup>12</sup> states that CEF funding does not constitute State Aid, although the use of RRF resources or other public resources to provide the necessary co-financing of a project may require notification and assessment by the Commission. However, the work programme includes several scenarios in which the use of RRF or other public resources would not constitute State Aid or could be considered compatible with the Treaty on the Functioning of the European Union without such notification.

For instance, resources coming from the EU, European Investment Bank (EIB), European Investment Fund or international financial institutions (e.g., International Monetary Fund or the European Bank for Reconstruction and Development), are considered as State resources *only if* national authorities have discretion as to the use of these resources (e.g., concerning the selection of beneficiaries).

When the resources mentioned above are awarded directly by the EU with no discretion on the part of the national authorities, they do not constitute State resources. For this reason, funding awarded under the CEF Digital Programme does not constitute State Aid.

On the contrary, the use of national funds (including Cohesion Funds and the RRF) provided by a Member State or imputable to a Member State (e.g., via National Promotional Banks and Institutions, NBPis, not acting in line with market conditions) may constitute State Aid within the meaning of Article 107(1) TFEU. In principle, the Commission must be notified of such usage and it will assess accordingly. This is also the case of public resources used to fund projects having received a Seal of Excellence.

However, in certain cases these public funds may not constitute State Aid or can be considered compatible with the TFEU without a notification, notably under the SGEI Decision or the General Block Exemption Regulation (GBER).

More details on State Aid and assessment by the Commission are provided in section 10, State Aid assessment, of this Annex to the Commission Implementing Decision.

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<sup>12</sup> Commission Implementing Decision C(2021) 9463 final of 16 December 2021 concerning the adoption of the work programme for 2021-2023 and the financing decision for the implementation of the Connecting Europe Facility (CEF)

### 3.5 STATE AID IN THE ELECTRONIC COMMUNICATIONS AND ICT SECTORS

In August 2010, the European Commission launched its initiative for a **Digital Agenda for Europe** defining the framework and priorities for the creation of a single market for content and telecoms. After this, in May 2015 it adopted the **Digital Single Market (DSM) Strategy for Europe Communication** and in 2016 set out a vision for a **European Gigabit Society**, which establishes objectives for 2025 centred on better, faster and wider spread connectivity everywhere. In September 2021 the Commission launched the **Path to the Digital Decade**, a concrete plan to achieve the digital transformation and economy by 2030. It translates the EU's digital ambitions for 2030 into a concrete delivery mechanism including a governance framework with a monitoring system, multiannual digital decade strategic roadmaps for each Member State and a mechanism to support the implementation of multi-country projects.

**Public authorities may fund investments for broadband infrastructure development in line with the EU State Aid rules.** To facilitate pro-competitive investments, the Commission adopted the first **Guidelines for the application of EU State Aid rules to the broadband sector** in 2009. To adapt the guidelines to fast moving technology markets and to the objectives of its digital agenda, the Commission has launched several revisions of these guidelines.

In December 2012 the European Commission adopted revised guidelines following the objective of facilitating **well-designed aid, targeted at market failures**, in order to achieve growth-enhancing priorities, while **simplifying the rules to achieve the ambitious goals of the EU Digital Agenda**.

The focus was put on achieving the right mix between public and private investment while building a pro-competitive environment. The new rules were intended to allow for well-designed public interventions targeted at market failures and ensure open access to state funded infrastructure.

The changes focused on the following principles and priorities:

- Technological neutrality: the new guidelines take into account technological advances, acknowledging that super-fast (next generation access) networks can be based on different technological platforms.
- Ultra-fast broadband networks: The revised guidelines allow public funding also in urban areas but subject to very strict conditions to ensure a pro-competitive outcome.
- Step change in connectivity: to protect private investors, publicly financed infrastructure can only be allowed if it provides a substantial improvement over existing networks and not only a marginal improvement in citizens' connectivity.
- Reinforcement of open access: when a network is realised with taxpayers' money, the consumers should benefit from a truly open network where competition is ensured.
- Transparency: new provisions regarding the publication of documents, a centralised data base for existing infrastructure and ex post reporting obligations to the Commission was introduced.

In addition to the conditions established by the broadband guidelines, the *General Block Exemption Regulation* ('GBER') lays down ex ante compatibility circumstances on the basis of which Member States can implement State Aid measures without prior notification to the Commission.

On 23 July 2021, the Commission adopted an amendment of the GBER accompanying the new Multiannual Financial Framework and allowing certain recovery-related aid measures. The amendment comprises provisions for fixed broadband networks, and 4G and 5G mobile networks. The main specifications established in the amendment are the following:

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, described in section 10 - Aid for broadband infrastructures, the conditions defined to classify national funds dedicated to investments in broadband network development as compatible with EU norms. The content of this section amended by Commission Regulation (EU) 2021/1237 of 23 July 2021 is reproduced below<sup>13</sup>.

*SECTION 10. Aid for broadband infrastructures. Article 52*

*Aid for broadband infrastructures*

*1. Investment aid for broadband network development shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.*

*2. The eligible costs shall be the following:*

*(a) investment costs for the deployment of a passive broadband infrastructure*

*(b) investment costs of broadband-related civil engineering works*

*(c) investment costs for the deployment of basic broadband networks and*

*(d) investment costs for the deployment of next generation access (NGA) networks*

*2a. As an alternative to establishing the eligible costs as provided for in paragraph 2, the maximum amount of aid for a project may be established on the basis of the competitive selection process as required by paragraph 4.*

*3. The investment shall be located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within three years from the moment of publication of the planned aid measure, which shall also be verified through an open public consultation.*

*4. The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process respecting the principle of technology neutrality.*

*5. The network operator shall offer the widest possible active and passive wholesale access, according to Article 2, point 139 of this Regulation, under fair and non-discriminatory conditions, including physical unbundling in the case of NGA networks. Such wholesale access shall be granted for at least seven years and the right of access to ducts or poles shall not be limited in time. In the case of aid for the construction of ducts, the ducts shall be large enough to cater for several cable networks and different network topologies.*

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<sup>13</sup> the consolidated version on this norm is published at the EU site <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0651-20170710&from=EN>

*6. The wholesale access price shall be based on the pricing principles set by the national regulatory authority and on benchmarks that prevail in other comparable, more competitive areas of the Member State or the Union taking into account the aid received by the network operator. The national regulatory authority shall be consulted on access conditions, including pricing, and in the event of dispute between access seekers and the subsidised infrastructure operator.*

*7. Member States shall put in place a monitoring and claw-back mechanism if the amount of aid granted to the project exceeds EUR 10 million.*

Aid for investments are therefore in broad terms compatible with EU regulation, if they are **allocated on the basis of an open, transparent and non-discriminatory competitive selection process**; located in **areas where there is no infrastructure or it is not likely to be developed on commercial terms within three years**; the network operator shall offer the **widest possible active and passive wholesale access**, granted for at least seven years and the right of access to ducts or poles shall not be limited in time.

The revision document of the broadband guidelines currently under consultation (from 19 November 2021 to 11 February 2022) states that, in order to achieve the Union's objectives for 2025 and 2030, adequate investments are needed. Such investments primarily come from commercial investors and may be complemented, where necessary, by public funds, in accordance with State Aid rules. The communication on shaping Europe's digital future indicates an estimated overall investment gap of EUR 65 billion per year for digital infrastructure and networks in the Union.

In addition to state funds, the Commission also recognised in the revision document that one of the key priorities of the RRF is to support the digital transition. The RRF is focused on connectivity measures aimed, in particular at **bridging the digital divide between urban and rural areas** and at **addressing market failures with respect to the deployment of performing networks**. The RRF regulation requires that each Member State dedicated at least 20% of the allocated funding to measures fostering the digital transition.

The digital transformation of the Union is centred on the development of secured and performant electronic communication networks that help making an important contribution to the main Union's environmental objectives. **In any case, further deployment of broadband networks continues to require the intervention of the National Regulatory Authorities ('NRAs') to ensure effective competition of the electronic communications sector.**

The Digital Economy and Society Index (DESI) reports indicate that by the end of June 2020, nearly all EU households (99.6%) had access to 4G LTE mobile networks and 13.9% to 5G networks. However, the objectives established by the Commission in its Gigabit Society Communication regarding the fulfilment of connectivity needs are more ambitious.

Connectivity needs to be achieved by 2025, identified by the Commission in the document European Gigabit Society include that all European households should have internet connectivity of at least 100 Mbps download speed, upgradable to 1 Gbps; socio-economic drivers such as schools, hospitals, public administration and digitally intensive enterprises should benefit from gigabit connectivity and all urban areas and all major terrestrial transport paths should be covered by an uninterrupted 5G network.

The Digital Compass Communication envisages that, by 2030, all Union households should have access to a gigabit network, and all populated areas should have 5G coverage. The Digital Decade Policy Programme's proposal underlines, that societal needs for upload and download bandwidth are constantly growing. It states that by 2030, networks with gigabit speeds should become available at accessible conditions for all those who need or wish to have such capacity.

Those are the motivations of the Commission to proceed with a new revision of the Guidelines on State Aid rules for broadband networks (the 'Broadband Guidelines') in 2021. The Commission has proceeded with this new revision following the objective of fostering the deployment of broadband networks including gigabit and 5G networks, but also to limit the competition distortions when the market does not deliver sufficient connectivity services.

The existing 2013 Broadband State Aid Guidelines allow for public investments where a market failure exists and where these investments bring a significant improvement. This is also subject to certain other parameters to protect competition and private investment incentives. They seek to ensure that public support leads to modern infrastructure increasing consumer welfare and reducing the digital divide where commercial operators have no incentive to invest, while avoiding crowding out of private investments, subsidising local monopolies or discriminating certain technologies.

**The aim of this new revision is facilitating the deployment and take-up of broadband networks mainly in areas suffering from insufficient connectivity services, such as remote and sparsely populated regions of the EU.**

On the one hand, the *Broadband Guidelines* are designed to enable Member States, subject to certain conditions, to support modern infrastructures capable of providing end-users with high quality and affordable connectivity services and reduce the digital divide where commercial operators have no incentive to invest. On the other hand, they are designed with the aim of protecting private investments by providing that public intervention do not interfere with private operators' investments and in case it is considered necessary **its awarding and management focuses on fostering fair competition through competitive selection procedures, technological neutrality and open access requirements.**

Even though the guidelines broadly fit for its purpose, it has been identified that some targeted adjustments of the existing rules are necessary when it comes to reflecting the latest market and technological developments and fast evolving connectivity needs as stated in the current EU priorities.

The revision proposed by the Commission consists of:

- Introducing new speed thresholds for public support to gigabit fixed networks and new guidance on support for the deployment of mobile networks. This revision is focused in contributing to attend the increasing connectivity needs of end-users and clarifying the conditions under which support may be granted. The aim in this sense concentrates on the identification of a market failure and clarification of the performance that the networks must achieve.

- Introducing a new category of possible aid in the form of demand-side measures supporting the take-up of fixed and mobile networks (vouchers).
- Further clarifying certain concepts such as mapping, public consultations that need to be carried out before granting the aid, competitive selection procedure, wholesale access obligations, and extension of the subsidised networks with private funds.
- Modifying the structure of the guidelines aiming at increasing readability and easing their application.

The main changes the Commission considers at this stage of the revision, as identified in the explanatory note published, are the following:

- (i) alignment of the intervention threshold for public support to gigabit fixed networks with current and expected technological and market developments
- (ii) guidance on support for the deployment of mobile networks
- (iii) a new category of possible aid in the form of demand-side measures supporting the take-up of fixed and mobile networks (vouchers)
- (iv) guidance regarding an operator's use of its own resources to connect to the publicly-funded infrastructure to provide services outside the area for which the aid was granted
- (v) adjusting wholesale access obligations to reflect technological progress
- (vi) clarifications concerning certain concepts, such as mapping, a public consultation and a selection procedure, and a claw-back mechanism

State Aid in the sector has been questioned in a considerable number of cases. The list of Commission decisions on State Aid to broadband and mobile measures, and the particular information of each case is published at the competition-policy website<sup>14</sup>.

As noted in the Commission Notice on the notion of State Aid and in the relevant State Aid guiding templates published by the Commission to assist Member States in the design of their national plans under the RRF "Guiding template: **Measures to support the deployment and take-up of fixed and mobile very high capacity networks, including 5G and fibre networks**"<sup>15</sup>, public support to connectivity projects not used for economic activities (e.g. the exercise of public powers, certain health care and education activities) may not constitute State Aid. The same principle applies to projects in which the public authorities intervene in line with normal market conditions or when the public support granted can be considered as de minimis.

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<sup>14</sup> [https://ec.europa.eu/competition-policy/document/download/258fba43-4d06-45c0-8e4e-68db3627246f\\_en](https://ec.europa.eu/competition-policy/document/download/258fba43-4d06-45c0-8e4e-68db3627246f_en)

<sup>15</sup>

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/template\\_RFF\\_broadband\\_roll\\_out\\_and\\_demand\\_side\\_measures.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_broadband_roll_out_and_demand_side_measures.pdf)



In addition, even when State Aid is present, no notification is required for certain types of projects, notably those covered by the GBER. As mentioned before, the Commission has recently reviewed the GBER and has declared the State Aid used to fund or co-fund certain CEF Digital projects financed or having received a CEF Seal of Excellence exempt from notification. Specifically, this concerns certain cross-border sections of

1. 5G corridors
2. backbone networks interconnecting certain computing facilities and data infrastructures supporting the objectives of the European High-Performance Computing Joint Undertaking
3. backbone networks interconnecting cloud infrastructures of certain SEDs as well as certain submarine cables

### 3.6 STATE AID IN THE ENERGY SECTOR

EU law foresees a general prohibition of State Aid as well in the energy sector. This general prohibition intends to avoid distortions in competition as support granted by Member States may unfairly strengthen the position of companies that benefit from it with respect to their competitors.

However, the Commission considers that State Aid can provide **incentives to reach the EU targets for a low carbon and energy-efficient economy**. This is the reason why the rules for environmental State Aid allow a broad range of aid measures for environmental protection, whilst ensuring that any distortions of competition brought about by such measures do not go beyond what is necessary and acceptable.

Despite the general prohibition, as in some circumstances government intervention is necessary for a well-functioning and equitable economy, and the treaty leaves room for a number of policy objectives for which State Aid investments in the energy sector can be considered compatible. The control by the Commission has the objective that State Aid for companies in the energy sector facilitates the development of an economic activity without affecting trade conditions to any extent contrary to the common interest.

In the energy sector, the policy objectives for which State Aid can be considered compatible with EU regulations include the promotion of:

- Energy from renewable sources: The 2030 Climate & Energy Framework sets the targets for climate change and energy sustainability in the Union. The achievement of those targets may need State Aid measures, applied under certain conditions. National targets are defined in national energy and climate plans 2021-2030.
- Energy efficiency measures: The Commission considers that State Aid may be needed to promote investments in energy efficiency in order to meet the targets of the Energy Efficiency Directive.
- Energy infrastructure: Investments in energy infrastructure are often characterized by market failures and may generate substantial positive externalities.
- Generation adequacy: Capacity mechanisms are designed to support investments for maintaining existing capacity or investing in new capacity needed to guarantee security of electricity supplies.



Those mechanisms have an impact on competition in the internal electricity market. Many of these mechanisms involve State Aid and are subject to EU State Aid rules.

- Tradable permit schemes: Tradable permit schemes can be set up to reduce emissions from pollutants and can involve State Aid, when Member States grant permits and allowances below their market value.

To verify that State Aid complies with EU law, the Commission follows the procedures for exception approvals. As already explained, only certain State Aid measures do not need to be notified to the Commission for assessment and approval as they are considered to result in a limited distortion of competition. These measures are regulated by:

- the “*de minimis* aid” with a ceiling of EUR 200,000 per beneficiary over three fiscal years
- the General Block Exemption Regulation (GBER) which covers measures below a certain notification threshold including:
  - investment aid for high-efficiency cogeneration
  - investment aid for the promotion of energy from renewable energy sources
  - investment aid for energy infrastructure

Measures which concern other specific forms of aid, have to be notified to the Commission. To declare an Aid compatible with the treaty rules the Commission will balance its positive effects (facilitating the development of an economic activity) against the negative ones (affection on trading conditions to an extent contrary to the common interest).

State contributions are examined under the **Guidelines on State Aid for environmental protection and energy 2014-2020 (EEAG)**. EEAG enable Member States to fund projects for environmental protection (including climate protection and green energy) and energy generation adequacy in a cost-effective and non-distortive way.

Revisions of the EEAG and the relevant provisions of the GBER have been undertaken, the latter having taken place in 2021, focused on helping to reach the EU environmental and energy objectives in a cost-effective manner with minimum distortions of competition and trade.

The EEAG establishes the need for a competitive bidding process for allocating public support to renewable energy technologies and include criteria for supporting energy infrastructure, focusing on projects that improve cross-border energy flows and promote infrastructure in Europe's less developed regions.

Energy infrastructure includes transmission, distribution, and storage infrastructure for electricity.

As established in the 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, **infrastructure investments which are made within the framework of a legal monopoly are not subject to State Aid rules**, provided a number of requirements are met.

- A Transmission System Operator (TSO) or a Distribution System Operator (DSO) is legally the only entity entitled to make a certain type of investment and no other entity can operate an alternative network.
- If the operator of the energy infrastructure is active in another (geographical or product) market that is open to competition, cross-subsidisation must be excluded for which separate accounts are required.
- In case of a natural monopoly, the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large given that access and use of this infrastructure is subject to third party access requirements under the EU energy market Legislation ("Third Package").

As a general rule, **Member States must ensure that the funding provided for the construction of the electricity infrastructure cannot be used to cross-subsidise or indirectly subsidise other economic activities**, including the operation of the infrastructure.

Certain electricity infrastructures, and in particular electricity interconnectors and storage facilities, do not fall under legal or natural monopoly. Those are typically financed by market actors as recognised in previous decisions. For instance, interconnectors are revenue-generating installations, which do not have the characteristics of natural monopolies, and the construction and operation is in principle an activity open to competition. Also, investments in storage facilities are rather common assumed by market actors.

However, **State Aid could be considered admissible if the operators, who make use of the aided infrastructure to provide services to end-users, are assigned on the basis of a competitive, transparent, non-discriminatory and unconditional tender**. In this case, it can be presumed that the fee it pays for the right to exploit the energy infrastructure is in line with market conditions.