

Targeted Public Consultation on the Evaluation of the state aid rules for the deployment of broadband networks

Fields marked with * are mandatory.

Introduction

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

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

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

- The 2013 [Broadband Guidelines](#)
- The relevant parts of the [General Block Exemption Regulation](#) (General Block Exemption Regulation) (2014)

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

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

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

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

Why are we consulting?

As part of our evaluation of the state aid rules for broadband infrastructure, we're running 2 consultations in parallel:

- a general questionnaire
- this targeted consultation, which focuses on the technical detail of the Broadband Guidelines and the relevant parts of the GBER.

We would like to know your views on whether the rules:

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

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

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

To help us analyse your reply:

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

Saving and submitting

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

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

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

Contacts

Still got questions?

For **technical problems**, please contact our CENTRAL HELPDESK.

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

Who are we consulting?

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

However, we are particularly interested in feedback from bodies with expertise or experience in the broadband infrastructure sector (industry, academia, consultancy/law firms, all levels of government and any authorities managing or regulating the relevant EU state aid rules).

This questionnaire is in English and the German and French versions will be uploaded in the end of September – but you can respond in **any official EU language**.

Your details

Language for responding

English

I am responding as

National authority

Surname

Email

WJZStaatssteun@minezk.nl

Organisation name

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

Transparency register number

Country of origin

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

Yes

What is your interest and the main reason for responding?

The state aid framework for broadband is relevant for Dutch granting authorities.

Please briefly explain your activities/describe your organisation/company and - if applicable - the main goods/services you provide.

Not applicable

What kind of services does your company provide?

Not applicable

What kind of technology does your company use?

Not applicable

200 character(s) maximum

Publication privacy settings

You can choose whether your identity can be made public with your contribution.

Anonymous: only your type of respondents and country of origin will be published. All other personal details (name, organization name and size, transparency register number) will not be published.

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The Commission will publish the responses to this public consultation. You can choose whether your contribution can be made public, or whether it will remain fully or partially confidential. In case your contribution contains confidential elements, please submit also a non-confidential version to be published.

Public. Your contribution may be published in full. Tick this box also for the non-confidential version of your contribution.

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Technical questionnaire

This consultation relates to state aid rules for the deployment of broadband infrastructure – specifically the [Broadband Guidelines](#) and the relevant parts of the [GBER](#) (unless otherwise specified).

Section 1 – Service of general economic interest (paras 18 to 27, Broadband Guidelines)

Not applicable/no relevant experience or knowledge

[...]

Section 2 – Additional measures supporting broadband rollout (paras 28 to 29, Broadband Guidelines)

Not applicable/no relevant experience or knowledge

[...]

Section 3 – Role of the National Regulatory Authority (NRA) (paras 42-43, Broadband Guidelines)

Not applicable/no relevant experience or knowledge

[...]

Section 4 - Next Generation Access (NGA) network and Next generation network (NGN) definitions (paras 55 to 60, Broadband Guidelines)

Type of networks classified as NGA in terms of infrastructure:

The state aid rules for the deployment of broadband infrastructure define NGA networks as access networks which rely wholly or partly on optical elements and which are capable of delivering broadband access services with enhanced characteristics, compared to existing basic broadband networks. This means

- (i) fibre-based access networks (FTTx);
- (ii) advanced upgraded cable networks;
- (iii) certain advanced wireless access networks capable of delivering reliable high speeds per subscriber.

13. Is the distinction between basic broadband and NGA networks still relevant?

Partially

14. Is this definition of an NGA network still valid, especially in view of the Gigabit and 5G connectivity objectives proposed by the Commission in the [Gigabit Communication](#)?

Partially

Please explain

While there are areas that still lack NGA-access, the 30 Mbps threshold for white areas is obsolete and should be aligned with the Gigabit target. Also, it is unclear whether fixed-wireless networks that offer up to 30 Mbps should be considered as a Next Generation Access Network (NGA). We refer to the attached non paper for our response.

15. At this stage of technological and market development, do you think that:

a. other types of telecom networks should have been included in the definition of NGA networks?

No

b. some types of telecom networks should have been left out of the definition of NGA networks?

No

16. The Broadband Guidelines state that, to be considered NGA, advanced fixed wireless access networks must provide the relevant speeds reliably. Do you think this requirement:

Is relevant: Yes

Is clear: No

Can be applied in a consistent way: No

Please explain

The reliability criterium is not sufficiently clear. In this regard, the Dutch authorities would like to point out that regulation (EU) 2015/2120 distinguishes a minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks (which according to the BEREC Guidelines on the Implementation of the Open Internet Regulation includes fixed- wireless networks; BoR (20) 112).

The Broadband Guidelines describe NGA networks as having the following characteristics:

- (i) capable of delivering services reliably at a very high speed per subscriber through optical (or equivalent

technology) backhaul sufficiently close to user premises to guarantee the actual delivery of the very high speed;

(ii) capable of supporting a variety of advanced digital services including converged all-IP services;

(iii) having substantially higher upload speeds than basic broadband networks.

By referring to the Digital Agenda for Europe targets, NGA networks are generally considered able to provide at least 30 Mbps download speed and ultrafast networks at least 100 Mbps download speed.

17. Is the concept of download speed clear?

No

Please explain

the Dutch authorities would like to point out that regulation (EU) 2015/2120 distinguishes a minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks.

18. Does it take into consideration all relevant aspects?

No

If not, which aspects?

peak-time speed

normally available speed

minimum committed speed

other aspects (please give details below)

Please explain

The Dutch authorities would like to point out that regulation (EU) 2015/2120 distinguishes a minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks. Not only the maximum speed should be considered in the context of state aid, because the other aspects are also very relevant for the end user. The average end user does not understand his premise may not be eligible for state aid on the basis of the maximum speed alone.

19. Do you think the concept of 'substantially higher upload speed':

Is clear? No

Should have been further clarified (e.g. clear thresholds)? Yes

Please explain

The concept of 'substantially higher upload speed' is elaborated in state aid cases but should be specified in the guidelines themselves to provide guidance and consistent application in advance.

20. The Broadband Guidelines refer to the concept of 'reliability' in defining NGA networks: to be considered NGA, networks must be able to deliver the relevant speeds reliably (cf. para 58, Broadband Guidelines). Do you think that concept:

Is relevant? Yes

Is clear? No

Can be applied in a consistent way No

Please explain

The concept of 'reliability' is insufficiently clear. The Dutch authorities would like to point out that regulation (EU) 2015/2120 distinguishes a minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks.

21. Were the technical parameters sufficient when classifying the networks/technologies?

[...]

22. The Broadband Guidelines state that the impact of nomadic users needs to be considered when assessing the actual possibility for a mobile network to provide NGA services.

Is the reference to nomadic users valid for assessing mobile networks? **Yes**

Should further guidance have been given? **No**

The Broadband Guidelines define NGN as backhaul networks which do not reach the end-user, are open for interconnection with other networks and are able to sustain both basic and NGA types of networks.

23. Is the definition of an NGN:

Clear? **Yes**

Relevant? Especially in view of the Gigabit and 5G connectivity objectives proposed by the Commission for 2025 **Yes**

24. Should further guidance on the NGN definition have been given?

No

Section 5 - Distinction between white, grey and black areas for NGA and NGN networks (paras 73 to 78, Broadband Guidelines and article 52(3), GBER)

The state aid rules for the deployment of broadband infrastructure identify different areas for the same category (basic broadband or NGA):

- 'white' = no infrastructure
- 'grey' = only one infrastructure
- 'black' = at least two infrastructures of the same category (basic broadband or NGA)

This infrastructure can either be already in place or credibly planned in the near future. For each area, the rules for the broadband infrastructure deployment set specific conditions for public support.

25. Is the distinction between the 3 types of area clear?

No

Please explain

- **The 30 Mbps threshold for white areas is obsolete.** While there is no speed threshold as such in the guidelines on state aid for broadband to distinguish white and grey areas, in the decisions of the European Commission on state aid measures of Member States the threshold is set at 30 Mbps. This reflects the goal of Europe's 2020 strategy: access for all to a connection of at least 30 Mbps. New common EU broadband targets have been set for 2025: access for all to a connection of at least 100 Mbps, upgradable to Gigabit speed. This raises the question whether the 30 Mbps threshold should not be shifted to 100 Mbps. Although state aid for roll out in grey areas is possible following the step change principle (e.g. Bavaria, case number SA.48418), this is a much more complicated and lengthy procedure than state aid for white areas under the General Block Exemption.

- **Demarcation of white and grey areas is complicated in practice.** In practice, an area in the Netherlands can consist of a mix of white, grey and even black spots. A geographical demarcated rural area can consist of up to 30% grey premises (see for example the figure in the annex). The General Block Exemption only allows to connect white premises, and possibly some residual grey premises but certainly not up to 30% of an area. The following arguments advocate for connecting grey premises under article 52 of the General Block Exemption:
 1. By connecting and offering services to white and grey premises on the same digging route, the costs of the roll-out of new high capacity networks per household can be reduced and efficiency can be promoted. In many cases this is necessary to attain a reasonable business case that can be justified based on the underlying costs. Otherwise the chance will increase that white premises structurally remain white because of the very high costs. On top of using the same digging route, white and grey premises will often use part of the same active and passive infrastructure.
 2. Because their connection is considered grey, part of the residents of the same community cannot be connected to a very high capacity network and hence not benefit from the public funds for broadband, while other residents of the same community whose connection is considered white do receive these advantages of public funding. Especially in small communities this can be politically difficult to explain. Also, differences between the maximum/advertised speed and the average speed the end user experiences can make it hard to explain to the residents involved why their address is considered grey instead of white; i.e. when the average speed is below 30 Mbps. Regulation (EU) 2015/2120 has enhanced transparency of the speed offered to the end user, but this does not alter the eligibility for state aid.
 3. Many grey premises located around the white premises just meet the 30 Mbps threshold (upgraded copper). These premises may not be upgraded to the new EU ambition of 100 Mbps without any support. It should be prevented that these premises become digital exclusion areas. Furthermore, the business case of citizen's initiatives can now easily be complicated and delayed by incremental upgrades of the incumbent that lift the speed of the connection to 30 Mbps, but fall short of 100 Mbps.

26. Is the distinction between white, grey and black areas useful for identifying the areas most in need of state aid?

See the answer to question 25.

27. Would additional network categories (apart from basic broadband and NGA) facilitate the design and assessment of a state aid measure?

See the answer to question 25.

28. What is your experience of the application of the specific criteria for identifying the colour of intervention areas?

See the answer to question 25.

29. Has this 3-color distinction helped in designing state aid measures?

See the answer to question 25.

30. Has this distinction ensured that public intervention does not unduly distort competition or crowd out existing or credibly planned private investment?

See the answer to question 25.

31. To what extent are the criteria relating to the colour of the area relevant and sufficient for identifying areas with and without adequate broadband infrastructure - especially in view of the objectives in the Gigabit Communication and the 5G strategic objectives?

See the answer to question 25.

32. In some cases, a target area does not fall purely into one category of 'white', 'grey' or 'black'. In such areas there are some households already receiving a sufficient service in terms of speed and quality from an existing operator (i.e. households with a connection to an NGA network in an otherwise NGA white area). Have you experienced that situation?

See the answer to question 25.

33. In your view:

- The overbuilding of such households with a publicly financed network should always have been prohibited (i.e. these households would have to be 'carved out').
- Overbuilding should only have been allowed to a limited extent (i.e. the publicly financed infrastructure should not include more than a certain % of households already sufficiently served by existing infrastructure).

Not applicable/no relevant experience or knowledge

34. Apart from the lack of adequate infrastructure, the Broadband Guidelines also mention other possible criteria determining market failure (lack of competition due to market power or high entry barriers generating insufficient provision of quality and/or high prices, inadequate access conditions). In addition to the number of infrastructures present or planned in an area, have these other criteria been taken sufficiently into consideration?

Not applicable/no relevant experience or knowledge

35. When referring to infrastructure investment credibly planned in the near future, the Broadband Guidelines define the term 'near future' as referring to a period of 3 years. They state that if the public authority takes longer to deploy the subsidised infrastructure, the same time period should also be used to assess the existence of commercial investment plans.

a. What is your experience in applying this requirement?

Not applicable/no relevant experience or knowledge

b. Is 3 years a sufficient time period?

Not applicable/no relevant experience or knowledge

c. Is it right to align the period for assessing potential private investment with the estimated deployment time for the subsidised network if the deployment takes:

Not applicable/no relevant experience or knowledge

36. Are the rules on deploying backhaul networks sufficiently clear?

Yes

37. Are the Broadband Guidelines sufficiently clear on the issue of identifying market failures in terms of backhaul infrastructure that is present or planned in the near future?

Not applicable/no relevant experience or knowledge

38. Are the Broadband Guidelines sufficiently clear regarding the requirement that whenever the public intervention is limited to the backhaul part of the network, the assessment of market failures will take into account the situation on both the backhaul markets and the access markets?

Not applicable/no relevant experience or knowledge

Section 6 – Mapping (para 78(a), Broadband Guidelines, article 52(3), GBER)

39. To what extent do the provisions of the state aid rules for the deployment of broadband infrastructure regarding the conducting of a mapping exercise allow the efficient identification of those areas most in need of state aid support?

Partially

Please explain

See the answer to question 25, the demarcation of white and grey areas is problematic in practice. Furthermore, the Dutch authorities observe that the central government has a very important role in the guidelines and decisions of the EC and consequently also during the implementation of a State aid measure. This makes it more difficult not only for local authorities to get approval of the EC for a local support measure, but also for a framework scheme designed for municipalities by the central government to get an approval. Also the State aid regime seems to contain more requirements in practice than would appear in the first instance from the text of the guidelines. The Dutch authorities request the EC to provide more clarity in advance, preferably in the guidelines themselves.

40. Should more guidance have been provided on how to carry out the mapping exercise?

Yes

Please explain

See the answer to question 40.

41. Have you had problems identifying other appropriate criteria to carry out a mapping exercise?

Yes

Please explain

See the answer to question 40.

42. Should the same criteria have been used for identifying both existing and planned infrastructure?

Not applicable/no relevant experience or knowledge

43. The state aid rules for the deployment of broadband infrastructure require mapping to be carried out at address level. Do you think the mapping granularity should have been adjusted proportionally to the timeframe for deploying the network? That is, less detail for longer timeframes (e.g. address-level detail for the very near future and grid-level for longer periods)?

Please explain

See the answer to question 40.

44. Have you had problems identifying the appropriate granularity for mapping?

Please explain

See the answer to question 40.

45. Have the mapping requirements adequately clarified the distinction between fixed networks and:

Not applicable/no relevant experience or knowledge

46. Should the state aid rules for the deployment of broadband infrastructure have defined mobile and fixed networks as belonging to different markets?

Not applicable/no relevant experience or knowledge

47. Currently, the state aid rules for the broadband infrastructure deployment do not contain any time limitation for the validity of the mapping. Is this problematic?

Not applicable/no relevant experience or knowledge

48. The state aid rules for the deployment of broadband infrastructure require mapping to be carried out on the basis of homes passed by a particular network infrastructure, rather than the actual number of homes or customers connected as subscribers. Is the concept of 'homes passed' sufficiently clear?

Not applicable/no relevant experience or knowledge

Section 7 – Public consultation (para 78(b), Broadband Guidelines, article 52(3), GBER)

Not applicable/no relevant experience or knowledge

[...]

Section 8 – Step change (para 51, Broadband Guidelines)

To qualify for subsidy, a network should be able to ensure a 'step change' in terms of broadband availability. A 'step change' can be demonstrated if, as the result of the public intervention:

- (i) the selected bidder makes significant new investment in the broadband network, and
- (ii) the subsidised infrastructure brings significant new capabilities to the market, in terms of broadband service availability and capacity, speeds and competition.

To determine the extent of the change, these factors must be compared both to existing networks and those for which there are concrete rollout plans.

59. Is the concept of step change clear?

Partially

Please explain

The step change principle is not clearly defined and therefore difficult to apply in practice.

60. Do the state aid rules for the broadband infrastructure deployment efficiently ensure that the public investment delivers an improvement, i.e. the positive effects outweigh any distortion of competition?

Partially

61. Are the criteria for identifying the step change still appropriate, especially in view of the objectives of the Gigabit Communication and 5G strategic objectives?.

Partially

Please explain

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

62. Should, under certain specific circumstances, network upgrades have been considered a sufficient step change, even if they only concern active components?

Yes

Please explain

Network upgrades may be considered a sufficient step change if robust criteria are applied.

Section 9 – Competitive selection procedure (para 78(c), Broadband Guidelines, article 52(4), GBER)

Not applicable/no relevant experience or knowledge

[...]

Section 10 – Technological neutrality (para 78(e), Broadband Guidelines, article 52(4), GBER)

Not applicable/no relevant experience or knowledge

[...]

Section 11 – Use of existing infrastructure (para 78(g), Broadband Guidelines)

Not applicable/no relevant experience or knowledge

[...]

Section 12 – Wholesale access (paras 78(g) and 80(a), Broadband Guidelines, article 52(5), GBER)

Not applicable/no relevant experience or knowledge

[...]

Section 13 – Wholesale pricing (para 78(h), Broadband Guidelines, article 52(6), GBER)

Not applicable/no relevant experience or knowledge

[...]

Section 14 – Claw-back (para 78(i), Broadband Guidelines, article 52(7), GBER)

Not applicable/no relevant experience or knowledge

[...]

Section 15 - Monitoring (para 78(i), Broadband Guidelines and article 52(7), GBER)

Not applicable/no relevant experience or knowledge

[...]

Section 16 – Transparency (para 78(j) of the Broadband Guidelines)

Not applicable/no relevant experience or knowledge

[...]

Section 17 – Reporting (para 78(k), Broadband Guidelines)

Not applicable/no relevant experience or knowledge

[...]

Section 18 - Forms of intervention (Annex I, Broadband Guidelines)

Not applicable/no relevant experience or knowledge

[...]

Final remark

This section addresses other relevant points related to the current state aid rules on broadband infrastructure deployment.

149. In addition to paras 78-85 of the Broadband Guidelines and Article 52 of the GBER, are there other conditions that beneficiaries of public support should have been required to comply with, to promote competition/reduce distortions of competition?

Not applicable/no relevant knowledge or experience

150. Do you have any other suggestions/comments?

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

151. Should this consultation examine any other issues? Are there additional questions we should include?

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

152. Please list any other competition/state aid concerns you may have in relation to the broadband infrastructure deployment.

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

Please upload your file

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

Yes

THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE

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