

The Hungarian authorities' position on the draft Guidelines on State aid for broadband networks
11 February 2022

The Hungarian authorities warmly welcome the draft new Broadband Guidelines, which they consider helpful and detailed guidance for designing State aid measures in the sector.

Please find below our comments.

1. Paragraphs (27)–(30) of the draft: The part on the compatibility of the aid under Article 106(2) TFEU (services of general economic interest, SGEI) is brief and vague, in contrast with the other parts of the draft describing the compatibility criteria of Article 107(3)(c) TFEU measures, for example. For this reason, the Hungarian authorities request the Commission to describe in more detail the applicable rules to SGEI entrustments for broadband development. While reference is made in the SGEI section to the concepts of wholesale access, mapping and public consultation, it is not clear whether these requirements are the same as in the part on Article 107(3)(c) TFEU measures. Also, the capacity requirements of SGEI eligible networks are not defined, and it is unclear whether the setting of the requirements is thus up to the Member States. The Commission should therefore either (i) detail the rules applicable to SGEI network development in Section 3, or (ii) include references in Section 3 to the specific rules of Sections 4 and 5 that apply to developments aided under Article 106(2) TFEU.

2. Paragraph (60) and (103): Hungary does not support the possibility of aiding network development in black areas, which the draft appears to allow in limited circumstances. The Hungarian authorities do not believe that there is market failure in black areas (i.e. if two independent networks are present).

3. Paragraph (113): Hungary welcomes that the national regulatory authorities should be consulted when designing the new measures. In Member States where there is a single authority with nationwide competence, this could even be stated as a requirement, given the direct link to wholesale access conditions in Article 61 of the Electronic Communications Code.

4. Paragraph (124): The Hungarian authorities request the Commission to give more guidance in the guidelines on how environmental impact should be handled and scored in the competitive bidding process, and how the do-no-significant-harm principle should be adhered to in practical terms. The Commission should complement the text with broadband specific practical examples and blacklists on how the Taxonomy Regulation should be complied with in this context.

5. Paragraph (127): The Hungarian authorities welcome that the technology neutrality requirement has been elaborated in the draft, and that it does not affect the Member States' rights to set performance targets and to grant priority to the most suitable solutions under certain conditions.

6. Paragraphs (129) and (130): The draft would require Member States to set up national database on the availability of existing infrastructures that could be re-used for broadband roll-

out, and the existence of such a database appears to be a pre-condition of setting up such schemes. While the existence of such databases is very beneficial, at this stage, it is unclear when such databases will be available in a number of Member States, especially since the setting up of such a database takes significant time and resources. For this reason, we propose that this requirement should be softened as shown below:

(129) Member States ~~must~~ are encouraged to set up a national database on the availability of existing infrastructures that could be re-used for broadband roll-out, including commercial infrastructure assets and those owned by public bodies.

(130) Where national databases as described in paragraph 129 are available, Member States must include in the competitive selection procedure's documents all information on available existing infrastructure, identified on the basis of the national database, as supplemented or updated based on the mapping and public consultation exercise.

7. Paragraph (156): The Hungarian authorities, in agreement with other Member States as evidenced by the Multilateral Meeting on 27 January 2022, request the Commission to raise the claw-back mechanism threshold to EUR 10 million to harmonize the threshold in the guidelines with the General Block Exemption Regulation (Article 52(9) GBER). We fail to see a policy based reason to apply different thresholds in the GBER as compared to the guidelines for comparable aid categories and objectives.

8. Paragraphs (185) and (200): The Hungarian authorities propose an increase of the maximum allowable durations of the aid schemes for connectivity and social vouchers to a uniform maximum duration of five years (from 2 and 3 years, respectively). While agreeing with the Commission that the duration of the schemes should be limited and assessed on a case by case basis, the Hungarian authorities believe a five-year maximum duration should be defined in the guidelines to allow flexibility in specific situations.

9. Paragraph (202): Hungary agrees with the other Member States that voiced their concern at 27 January Multilateral Meeting about the lowering of the threshold for the transparency requirement as compared to the current rules (from EUR 500,000 to EUR 100,000). As the transparency processes in Member States are far from being fully automated, this proposed change creates a significant additional administrative burden on both the aid grantors and the coordinating authorities.