

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

This non-paper reflects 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.

We welcome the evaluation of the broadband state aid regime and the opportunity for Member States to share their comments. The state aid framework can be challenging for local authorities. Even though roll-out of very high capacity networks should be market driven, there could be areas where the market will not deliver and public funding can be necessary to reach the goal of a European Gigabit society. It is therefore important that the guidelines on state aid for broadband are updated to reflect current technologies. Specific points we would like to raise in this regard are the following:

- **The 30 Mbps threshold for white areas is obsolete.** While there is no speed threshold as such in the guidelines on state aid for broadband to distinguish white and grey areas, in the decisions of the European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

Also, we welcome all efforts of the European Commission to give guidance to public authorities dealing with state aid issues for broadband. While the e-State aid wiki can help public authorities solve interpretation issues, direct contact with the European Commission early in the policy process to discuss questions is also important. Further examples of topics local authorities in the Netherlands have been struggling with are whether fixed-wireless networks that offer up to 30 Mbps should be considered as a Next Generation Access Network (NGA) and whether demand-side measures such as providing broadband vouchers for end users should be considered as state aid.

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. 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. 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.

Annex – example of the mixture of white and grey addresses within a geographical area



Green: rural premises with only twisted pair copper broadband infrastructure available (11,959).

Orange: rural premises with twisted pair copper and coaxial broadband infrastructure available (up to 5,174).