

RECOVERY AND RESILIENCE FACILITY – STATE AID

Guiding template: Electric recharging stations and hydrogen stations for road vehicles

Link to European Flagship: Recharge and Refuel

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I. Objective of the guiding template

1. The coronavirus pandemic has changed the economic outlook for the years to come in the European Union. Investments and reforms in the context of the Recovery and Resilience Facility (the “Facility”) are contributing to convergence and a sustainable economic recovery. Carrying out reforms and investing in the EU’s common priorities, notably green, digital and social resilience will help create jobs and sustainable growth, while modernising our economies, and allow the EU to recover in a balanced, forward-looking and sustained manner.
2. The Facility aims at mitigating the economic and social impact of the coronavirus pandemic and at making the EU economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the twin green and digital transitions. The Facility is also at the heart of the implementation of the REPowerEU Plan,¹ the Commission’s response to the socio-economic hardships and global energy market disruption caused by Russia's invasion of Ukraine. Therefore, if Member States want to obtain additional financing for key investments and reforms that will help achieve the REPowerEU objectives, they must add a REPowerEU chapter to their national recovery and resilience plans.²
3. The objectives of REPowerEU are, amongst others, to increase the resilience, security and sustainability of the EU’s energy system through the needed decrease of dependence on fossil fuels and diversification of energy supplies at EU level, including by increasing the uptake of renewables, energy efficiency and energy storage capacity.
4. State aid rules apply in the framework of the Facility. Member States should therefore ensure that all investments comply with the EU State aid rules and follow all regular procedures and rules³.

¹ Commission staff working document, REPowerEU Plan, COM(2022) 230 final, 18.5.2022

² See Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC, OJ L 63, 28.2.2023, p. 1.

³ See Commission staff working document - Guidance to Member States Recovery and Resilience Plans - Part 1, SWD(2021) 12 final, published 22.1. 2021 (https://commission.europa.eu/document/7c55aadf-6b8d-4d9c-a930-bc7ef8656de1_en) and Commission Notice- Guidance on Recovery and Resilience Plans in the context of REPowerEU, 2023/C 80/01 published on 3 March 2023 (<https://eur-lex.europa.eu/legal->

5. With this guiding template, DG Competition aims at assisting Member States with the State aid elements of their recovery plans and the dedicated REPowerEU chapters, and to provide guidance on the State aid-related aspects of those investments which are expected to be common to most of those plans.
6. The investments covered by this guiding template have been chosen in line with the European flagships of the Commission’s Annual Sustainable Growth Strategy 2021⁴. The template has been updated because of its relevance for investments and reforms contributing to REPowerEU objectives. The guiding template follows a uniform structure, providing sector-specific guidance as to when:
 - i. Instances in which the existence of State aid may be excluded, and therefore prior notification to the Commission is not necessary.
 - ii. State aid would be involved but no notification is necessary, and specific rules may apply (in case of aid exempted from the notification obligation); and
 - iii. State aid would be involved and a notification is necessary, with reference to the main applicable State aid rules.
7. The guiding template also contains ‘boxes’ with examples of the State aid assessment of the investments and reforms contained in the components published by the Commission,⁵ per flagship. The aim is merely illustrative, to provide additional clarifications to Member States on the State aid assessment contained in those components.

II. Description of the investment

8. This guiding template relates to investments to deploy infrastructure for supplying electricity and/or hydrogen to road vehicles, such as bikes, scooters, cars, vans, trucks, or buses⁶ (“recharging or refuelling infrastructure”), irrespective of whether they concern dedicated infrastructure intended for the beneficiary’s own use, semi-public infrastructure⁷ or publicly accessible infrastructure.
9. Public support may cover costs for the construction of the recharging or refuelling infrastructure, as well as additional necessary costs for its deployment, such as costs for the connection to the grid in case of recharging infrastructure for electric vehicles⁸.

content/EN/TXT/PDF/?uri=CELEX:52023XC0303(01)&from=EN). Also, the relevant public procurement rules must be respected, where applicable.

⁴ Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — Annual Sustainable Growth Strategy 2021, COM/2020/575 final.

⁵ Available at https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#example-of-component-of-reforms-and-investments.

⁶ Guidance concerning investments for the deployment of recharging and refuelling stations for zero- and low-emission vehicles in the maritime and air transport sectors is provided in the guiding template “*Other low emission transport modes – rail and inland waterway (rail infrastructure, transshipment terminals, rail maintenance workshops, acquisition / retrofitting of rail rolling stock and acquisition/retrofitting of inland waterway fleet) and short-sea shipping (aid for the launching of short-sea shipping services)*”.

⁷ This relates to recharging or refuelling infrastructure located on land with restricted access, which can be used by the owner/operator as well as third parties (e.g., company staff, customers, visitors etc.).

⁸ Costs may include, for example, cost of the recharging or refuelling infrastructure itself, installation of or upgrades to any electrical or other power components, including the transformer, that are required for

Guidance concerning support for the purchase of electric or other zero or low-emission road vehicles is provided in the separate guiding template on “*Premiums for the acquisition of zero- and low-emission road vehicles*”. The investments covered by this guiding template can be combined with investments aiming at improving the energy efficiency of buildings; for this type of investment reference is made to the guiding template on “*Energy efficiency in buildings*”. Under certain conditions, support for the construction of the recharging or refuelling infrastructure can also include support for investment costs of on-site production of renewable electricity or renewable hydrogen, and the investment costs of storage units for storing renewable electricity or hydrogen (see below explanations on article 36a GBER and section 4.3.2 CEEAG).

10. The investments under this guiding template will contribute to the *Recharge and Refuel* flagship,⁹ promoting future-proof clean technologies to accelerate the use of sustainable, accessible and smart transport, recharging and refuelling infrastructure and extension of public transport. The support for recharging and refuelling infrastructure is a cornerstone of this initiative. In “The European Green Deal”¹⁰, the Commission sets the objective of having at least 1 million publicly accessible recharging and refuelling points in place by 2025. Building-up a sufficiently dense, widespread, reliable and easy-to-use-alternative fuels infrastructure network is a necessary precondition for broader use of zero- and low-emission vehicles and an important enabler for their market uptake.

III. Instances in which the existence of State aid may be excluded

11. The following sections present a comprehensive, but not exhaustive, number of separate instances in which the application of State aid rules or the existence of State aid may be excluded. Given the cumulative nature of the criteria of Article 107(1) TFEU, if one of the following criteria is not met, the presence of State aid can be excluded and therefore there is no need to notify the measure to the Commission prior to its implementation.
12. This guiding template examines the existence of aid at the levels of the owner/developer, operator and user of the infrastructure, but also at these levels combined (e.g. integrated developer and operator).

A. No economic activity

13. Based on the Commission’s most recent State aid decisional practice, the deployment and operation of recharging or refuelling infrastructure is considered an economic activity.¹¹ This is because this activity is not intrinsically linked to the prerogatives of

connecting the recharging or refuelling infrastructure to the grid or a local electricity or fuel production or storage unit, technical equipment, civil engineering works, land or road adaptations, installation costs and costs for related and necessary permits.

⁹ More information on this flagship can be found here: https://ec.europa.eu/info/files/example-component-reforms-and-investments-clean-smart-and-fair-urban-mobility_en.

¹⁰ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - The European Green Deal, COM/2019/640 final.

¹¹ See, among others, Commission decision of 10 February 2020, SA.49276 (2019/N) – Romania – Development of a recharging infrastructure for plug-in hybrid and purely electric vehicles.

the State as public authority and the infrastructure is intended to be commercially exploited through the offering of recharging or refuelling services on the market.

14. However, if the recharging or refuelling infrastructure is aimed to be used exclusively for non-economic activities, support provided for the deployment of that infrastructure would not qualify as State aid. This is the case of infrastructure that is used for activities that the State normally performs in the exercise of its public powers (e.g. for safety or security)¹² or that is not used for offering goods or services on a market.¹³ It cannot be excluded that a state-owned dedicated infrastructure used exclusively for example by police, fire brigade, or military vehicles, would be deployed.
15. If the recharging or refuelling infrastructure is used for both economic and non-economic activities, public funding for its deployment will fall under the State aid rules only insofar as it covers the costs linked to the economic activities in question.¹⁴ In such cases, Member States must ensure that the public funding provided for the non-economic activities cannot be used to cross-subsidise the beneficiary's economic activities. This can notably be ensured by limiting the public funding only to the non-economic activities, to be identified on the basis of a clear separation of accounts.¹⁵

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Reform 1: Create the framework for cities/agglomerations to adopt and implement individual Sustainable Urban Mobility Plans (SUMP): *Drawing up SUMP should not as such raise State aid concerns. If in the context of the financial framework for the implementation of SUMP, it appears that support may be granted to undertakings performing economic activity, which could constitute a selective advantage, then the SUMP will take into consideration State aid rules.*

B. No State resources

16. Measures that do not involve the transfer of public resources exclude the existence of State aid¹⁶. For example, a legislative initiative imposing regulatory obligations to deploy recharging or refuelling infrastructure in a certain area, without providing funding for the recharging or refuelling infrastructure's roll out, may not involve State resources¹⁷.

¹² Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, paragraphs 7 and 8.

¹³ See 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 (“Notice on the notion of State aid”), OJ C 262, 19.7.2016, p. 1, paragraph 203. See also Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, paragraphs 7 and 8.

¹⁴ Notice on the notion of State aid, paragraph 205.

¹⁵ See judgment of the Court of Justice of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania*, C-74/16, ECLI:EU:C:2017:496, paragraphs 51 to 53, on separation of accounts and cross-subsidisation between economic and non-economic activities. See also Notice on the notion of State aid, paragraph 206.

¹⁶ The concept of ‘transfer of public resources’ covers many forms, such as direct grants, loans, guarantees, direct investment in the capital of companies and benefits in kind. A positive transfer of funds does not have to occur; foregoing State revenue is sufficient. In addition, the measure must be imputable to the State. See Notice on the notion of State aid, section 3.

¹⁷ Note that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

17. However, based on the Commission’s case practice, these types of intervention may not always be sufficient on their own to reach the objective of facilitating the deployment of recharging or refuelling infrastructure and incentivising the uptake of zero- or low-emission vehicles. This may especially be the case where the demand level is not sufficient to cover the additional investment costs without the aid¹⁸.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Reform 2: Progressively phase out the most polluting vehicles in most polluted urban area: *As long as the applicable legislation aims at removing the most polluting vehicles from circulation in the most polluted areas and does not provide for compensation for phasing out and scrapping those vehicles, there should not be State aid concerns.*

Reform 4: Simplify and harmonize permitting procedures for alternative fuels infrastructure: *This reform will be implemented by a revision of the current legislative framework governing the permitting procedures for roll out of alternative fuels infrastructure, including recharging and refuelling stations alongside the road network and in the building stock. Measures to make permit procedures leaner and quicker and to ensure transparency of the network data do not normally involve State resources and therefore do not fall under State aid rules. Access to data will be provided in principle on an open access basis and without favouring any particular undertaking thereby excluding any potential competition/ state aid concerns.*

C. No selectivity

18. Measures that are of general application and do not favour certain undertakings, or the production of certain goods, are not selective and do not constitute State aid.
19. This can be the case, for example, of a general tax reform. In such cases, selectivity is normally assessed by means of a three-step analysis¹⁹. Reductions or exemptions from taxes or social security contributions can fall outside State aid rules when they apply in the same way to all companies that are in a comparable factual and legal situation in the light of the inherent objective of the tax or social security system.
20. General measures *prima facie* applicable to all undertakings may be selective where their application involves discretionary powers of the granting authority. This is in particular the case of measures where the criteria for granting the aid are formulated in a very general or vague manner that necessarily involve a margin of discretion in the assessment²⁰.
21. In the case of individual measures, the finding of an economic advantage allows to presume selectivity.

D. No advantage

- a. *Deployment of the recharging or refuelling infrastructure in compliance with the market economy operator test*

¹⁸ See, among others, Commission decision of 1 April 2020, SA.54830 (2020/N) – United Kingdom – Scottish ultra-low emission bus (SULEB) scheme, recitals 107 and 108.

¹⁹ Notice on the notion of State aid, section 5.2.3.

²⁰ Notice on the notion of State aid, section 5.2.2.

22. For a State intervention not to confer an advantage to the beneficiary, the State should act as a market economy operator would do in a similar situation.

i. No advantage at the level of the owner/developer of the infrastructure

23. If it is proven that the State acted under the same terms and conditions as a market economy operator in a comparable situation when providing the necessary funding for the development of a recharging or refuelling infrastructure, then State aid is not involved. This can be assessed on the basis of: (i) significant *pari passu* investments of private operators, i.e. investments made on the same terms and conditions (and therefore with the same level of risks and rewards) as the public authorities who are in a comparable situation²¹; and/or (ii) an *ex ante* sound business plan, preferably validated by external experts, demonstrating that the investment provides an adequate return for the investor(s), in line with the normal market return that would be reasonably expected by operators on similar projects taking into account the level of risk²².

24. However, the existence of consecutive State interventions concerning the same recharging or refuelling infrastructure project might invalidate the conclusion that a similar measure would also have been undertaken by a market economy investor²³.

ii. No advantage at the level of the operator

25. Undertakings operating the aided infrastructure to provide services to end-users receive an advantage if the operation of the infrastructure provides them with an economic benefit that they would not have obtained under normal market conditions. This normally applies if what they pay for the right to exploit the recharging or refuelling infrastructure is less than what they would have had to pay for operating a comparable infrastructure under normal market conditions. For instance, in cases where, under normal market conditions, operators would have, to cover their costs, to increase their tariffs/remuneration to a level reducing demand to a non-profitable basis, or would simply not enter the market in the first place, it is considered that the aid confers an advantage on operators by allowing them to offer their services.

26. Where the operation of the recharging or refuelling infrastructure is assigned for a positive price to an operator/concessionaire on the basis of a competitive, transparent, non-discriminatory and unconditional tender²⁴ in line with the principles of the TFEU on public procurement²⁵, an advantage can be excluded at the level of the operator. In such a case, it can be presumed that the fee the operator pays for the right to exploit the recharging or refuelling infrastructure is in line with market conditions. This conclusion does not apply when the competitive bidding process only aims at allocating support to the operator and determining the level of support.

27. If the operator/concessionaire has not been selected through a tender in line with the above conditions, it may also be possible to establish that the fees paid by the

²¹ For more information, see Notice on the notion of State aid, paragraphs 86 to 88.

²² For more information, see Notice on the notion of State aid, chapter 4.2 and in particular paragraphs 101 to 105.

²³ Also see in this respect the Notice on the notion of State aid, paragraph 81.

²⁴ As described in the Notice on the notion of State aid, paragraphs 89 to 94.

²⁵ Provided that the appropriate selection criteria as set out in the Notice on the notion of State aid, paragraphs 95 and 96, have been used.

operator/concessionaire are in line with normal market conditions through (i) benchmarking with comparable situations²⁶, or (ii) on the basis of a generally-accepted standard assessment methodology²⁷.

iii. No advantage at the level of the end-user

28. If the operator of the recharging or refuelling infrastructure has received State aid or if its resources constitute State resources, it is in a position to grant an economic advantage to the users of the infrastructure, if they are undertakings²⁸.
29. An economic advantage at the level of the users can be excluded if (i) the recharging or refuelling infrastructure is not dedicated for the use by a specific user, (ii) all users enjoy equal and non-discriminatory access to the infrastructure, and (iii) the infrastructure pricing policy for users is established on market terms²⁹.

b. Deployment of the infrastructure necessary for the provision of a service of general economic interest (SGEI) in line with the Altmark criteria

30. Where deploying recharging or refuelling infrastructure is necessary for the discharge of public service obligations that are entrusted as a genuine service of general economic interest (“SGEI”), costs for the deployment of the infrastructure may be regarded as forming part of the overall costs incurred by the undertaking to provide that service³⁰. Those costs may therefore be covered by the compensation for the provision of the SGEI.
31. In such cases, the existence of an economic advantage at the level of the operator (*concessionaire*) may be excluded, if four cumulative conditions are met:

²⁶ Notice on the notion of State aid, paragraphs 97 to 100.

²⁷ Notice on the notion of State aid, paragraphs 101 to 105.

²⁸ Notice on the notion of State aid, paragraph 225.

²⁹ Notice on the notion of State aid, paragraphs 225 to 228 and section 4.2. Paragraphs 226 to 228 present three scenarios in which an advantage to users can be excluded. First, users do not receive an advantage where the fees for use of the infrastructure have been set through a tender that meets all the relevant conditions set out in paragraphs 90 to 96. Second, where such specific evidence is not available, aid to users can be excluded where the terms and condition for use of the infrastructure are in line with those under which the use of comparable infrastructure is granted by comparable private operators in comparable situations (benchmarking), provided such a comparison is possible. Third, if none of the above assessment criteria can be applied, the fact that a transaction is in line with market conditions can be established on the basis of a generally accepted, standard assessment methodology. The Commission considers that the market economy operator test can be satisfied for public funding of open infrastructures not dedicated to any specific user(s) where their users incrementally contribute, from an *ex ante* viewpoint, to the profitability of the project/operator. This is the case where the operator of the infrastructure establishes commercial arrangements with individual users that allow covering all costs stemming from such arrangements, including a reasonable profit margin on the basis of sound medium-term prospect. This assessment should take into account all incremental revenues and expected incremental costs incurred by the operator in relation to the activity of the specific user.

³⁰ This may be the case, for instance, of an undertaking providing public passenger transport services by bus as a SGEI, which needs to deploy dedicated recharging or refuelling infrastructure necessary for the operation of its buses.

- i. the infrastructure project is necessary for the provision of services that can be considered as genuine SGEI for which public service obligations have been clearly defined³¹;
- ii. the parameters of compensation have been established in advance in an objective and transparent manner;
- iii. there is no compensation paid beyond the net costs of providing the public service and a reasonable profit; and
- iv. the SGEI has been either assigned through a public procurement procedure that ensures the provision of the service at the least cost to the community or the compensation does not exceed what an efficient company would require.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Reform 3: Support the deployment of sustainable shared mobility services: *State aid rules are no hurdle to public service contracts including sustainable mobility services. However, if a running public service contract needs to be amended as a result of this initiative, local authorities will take into consideration the applicable EU framework.*

E. No effect on trade between Member States and no distortion of competition

32. Where an aid measure strengthens the competitive position of the benefitting undertakings compared to that of actual or potential competitors that are not eligible for the aid, it is considered to have potentially distorting effects on competition.³² Undertakings active in the deployment/operation of recharging or refuelling infrastructure are subject to competition within the European Union, and therefore aid to those undertakings threatens to distort competition with other providers of recharging or refuelling services (or other fuel types) that do not benefit from aid. Similarly, where aid is granted for the deployment of dedicated infrastructure, it has the effect of strengthening the position of the beneficiary vis-à-vis its competitors, in all cases where the market in which it operates is open for competition.
33. Aid measures are considered capable of affecting trade between Member States where the aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Union trade.³³ In principle, aid for the deployment of recharging or refuelling infrastructure is capable of affecting trade between Member States, as it concerns a sector where undertakings from any Member State can operate. Service providers that wish to install new recharging or refuelling infrastructure in other Member States where they do not have access to aid will be at a disadvantage when trying to start their operations.

³¹ In particular, the act or series of acts must at least specify (a) the content and duration of the public service obligations; (b) the undertaking and, where applicable, the territory concerned; (c) the nature of any exclusive or special rights assigned to the undertaking by the authority in question; (d) the parameters for calculating, controlling and reviewing the compensation; and (e) the arrangements for avoiding and recovering any overcompensation.

³² Notice on the notion of State aid, paragraph 187.

³³ Notice on the notion of State aid, paragraph 190.

34. However, in very specific circumstances described below, the Commission may find that an aid measure is unlikely to distort competition or affect trade between Member States, in particular in light of the limited amounts of aid. That said, the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected.³⁴

a. De minimis aid

35. The distortion of competition and effect on trade can be excluded in cases of very limited amounts of aid (“*de minimis* aid”). *De minimis* aid is not considered State aid. Therefore, there is no need for prior approval from the Commission and Member States do not even have to inform the Commission of such aid.

36. Aid is considered to be *de minimis* if the total amount of aid granted per Member State to a single undertaking does not exceed EUR 200 000 over any period of three fiscal years and the other conditions laid down in the *de minimis* Regulation are respected³⁵.

37. In several cases concerning recharging or refuelling infrastructure³⁶, the Commission found that the measures at hand did not constitute State aid as the abovementioned threshold and all other conditions of the *de minimis* Regulation were respected.

38. Where deploying recharging or refuelling infrastructure is necessary for the discharge of public service obligations that are entrusted as a genuine SGEI, costs for the deployment of the infrastructure can be regarded as forming part of the overall costs incurred by the undertaking to provide that service. Those costs may therefore be covered by the compensation paid by the Member State for the provision of the SGEI. Public funding granted for the provision of a SGEI³⁷ in sectors other than land transport³⁸ not exceeding EUR 500 000 over three years is not regarded as State aid, provided the other conditions of the SGEI *de minimis* Regulation³⁹ are also fulfilled.

³⁴ Notice on the notion of State aid, paragraph 192.

³⁵ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L352, 24.12.2013, p. 1. Notably, the aid must be transparent within the meaning of Article 4 of the Regulation (i.e. it must be possible to calculate precisely the gross grant equivalent of the aid *ex ante* without a risk assessment), the EUR 200 000 threshold must be respected in case of cumulation with any other public support granted to the same beneficiaries under the *de minimis* Regulation, and the cumulation rules set out in the Regulation must be complied with.

³⁶ See Commission decision of 22 May 2017, SA.36181 (2016/FC) – The Netherlands – Alleged aid to electric vehicle fast recharge stations.

³⁷ For instance, compensation granted to an undertaking for the provision of postal services entrusted to it as a SGEI may cover costs for the deployment of dedicated recharging or refuelling infrastructure necessary for its operation, where the Member State concerned imposed the use of zero- or low-emission vehicles for the discharge of the public service obligations.

³⁸ Please note that Article 106 TFEU, as well as the SGEI *de minimis* Regulation, the SGEI Decision and the SGEI Framework (that are based on Article 106 TFEU) do not apply to public service compensation in the land transport sector. Indeed, Article 93 TFEU, laying down the rules applicable to public service compensation in the land transport sector, constitutes a *lex specialis* with regard to Article 106(2) TFEU.

³⁹ Commission Regulation No 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

b. No potential effect on trade: purely local impact

39. There may be instances of support measures that have a purely local impact and consequently have no effect on trade between Member States. However, this may only be the case if (i) the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States; and (ii) it cannot be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishments (i.e., if it is unlikely to have a material bearing on the decision of investors to establish an outlet in the region/Member State in question).⁴⁰ While it is not possible to define general categories of measures that typically meet these criteria, the Commission has identified in its Notice on the notion of State aid examples of situations where it found that public support was not liable to affect trade between Member States⁴¹. The services of DG Competition take the view that the deployment of recharging infrastructure in semi-public areas linked to activities of a local character (e.g., sports and leisure facilities serving predominantly a local audience and unlikely to attract customers or investment from other Member States) may not involve State aid.
40. In the case of recharging or refuelling infrastructure for public use, evidence to demonstrate that there is no effect on trade could include data showing that there is only limited expected use of the infrastructure from outside a limited area within the Member State and that cross-border investments in the relevant market are minimal or unlikely to be adversely affected.⁴² The services of DG Competition would consider that the effect on trade cannot be excluded, in particular for recharging or refuelling infrastructure deployed on/along motorways and main arteries, in major cities, cross-border areas or networks applying to large sections of a country.

IV. Instances in which there is no need to notify for State aid clearance, but other requirements may apply

41. If a given investment meets the cumulative conditions of Article 107(1) TFEU and thus entails State aid, it may be considered compatible with the internal market and can be granted without notification in the following instances:
- A. Aid covered by an existing State aid scheme (conditions for no notification)*
42. If a Member State plans to grant State aid under an aid scheme already approved by Commission decision, it does not need to notify again the scheme to the Commission for approval and can directly provide the support to the beneficiary, as long as the conditions of the authorisation decision are complied with.
43. Moreover, any increase of up to 20% of the original budget of an aid scheme already approved by Commission decision is not consider an alteration to existing aid. If this is

⁴⁰ See Judgment of the General Court of 14 May 2019, *Marinvest d.o.o. and Porting d.o.o. v Commission*, Case T-728/17, EU:T:2019:325.

⁴¹ See Notice on the notion of State aid, paragraph 197.

⁴² See Notice on the notion of State aid, paragraph 210.

the only change to a scheme already authorised by the Commission, it does not need to be re-notified to the Commission for approval⁴³.

44. In any event, full compliance with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility⁴⁴ should be ensured (see in particular Article 17(2)).

B. General Block Exemption Regulation (GBER)⁴⁵

45. In cases where the Commission has gained sufficient experience with a given kind of State aid, it may block exempt such State aids, i.e. the Member States do not have to notify them. They only have to inform the Commission thereof.
46. The GBER provisions on aid in the field of climate, environmental protection and energy recently underwent a targeted revision aimed at further facilitating support for green projects, without the need for prior approval from the Commission. The text of an amendment to the GBER was endorsed by the Commission on 9 March 2023.⁴⁶ The amendment to the GBER will enter into force the day following its publication in the Official Journal. Once the amended GBER provisions enter into force, they will apply retroactively to individual aid granted before their entry into force. For existing aid measures, Member States will need to adapt any schemes to comply with the amended GBER within 6 months following its entry into force. For a full picture of the transitional provisions, please see Article 58 GBER. Subsequent references to the GBER refer to the GBER as amended in the endorsed text.
47. A measure is exempted from notification if it is granted in compliance with the conditions of the GBER⁴⁷. A number of GBER provisions may be applicable to investments to deploy recharging or refuelling infrastructure, depending on the specific characteristics of the project.
48. **Article 36a GBER** allows for investment aid up to EUR 30 million per undertaking per project and, in the case of schemes, an average annual budget of EUR 300 million, for recharging or refuelling infrastructure that supply vehicles, mobile terminal equipment or mobile groundhandling equipment with electricity or hydrogen. Under this provision, Member States can grant investment aid for the construction, installation, upgrade or extension of recharging or refuelling infrastructure. Article 36a does not apply to aid for investments relating to recharging and refuelling infrastructure in ports, which are covered by Articles 56b and 56c of the GBER.

⁴³ In case of budget increases to already authorised schemes exceeding 20 % and/or their prolongation up to 6 years, the so-called simplified notification procedure under Article 4 of the Implementing Regulation (Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.04.2004, p. 1) can be used, whereby the Commission aims to complete the assessment of notified State aid measures within one month.

⁴⁴ OJ L 57, 18.2.2021, p. 17.

⁴⁵ 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, OJ L 187, 26.6.2014, p. 1.

⁴⁶ The full text endorsed by the Commission is available here: https://competition-policy.ec.europa.eu/document/8d68e6c3-763a-41db-9e34-42f90bc5e892_en.

⁴⁷ Compliance with the GBER is established if a measure fulfils the conditions of Chapter I of the GBER as well as those set out in the applicable specific provisions in Chapter III.

49. The eligible costs may include the costs of the recharging or refuelling infrastructure itself and related technical equipment, the installation of or upgrades to electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit, as well as civil engineering works, land or road adaptations, installation costs and costs for obtaining related permit. The eligible costs may also cover the investment costs of on-site production of renewable electricity or renewable hydrogen, and the investment costs of storage units for storing renewable electricity or hydrogen. The nominal production capacity of the on-site renewable electricity or renewable hydrogen production installation shall not exceed the maximum rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.
50. As regards refuelling infrastructure supplying hydrogen, this infrastructure can be supported only if the Member State obtains from the beneficiary a commitment that by 2035 at the latest, the refuelling infrastructure will solely supply renewable hydrogen.
51. To be exempted from the notification obligation, all the conditions laid down in the proposed Article 36a GBER, in addition to the general conditions set out in Chapter I, need to be complied with. These include:
- i. The aid shall be granted following a competitive bidding process⁴⁸. In this case, the aid intensity may reach up to 100 % of the eligible costs.

Aid may be granted in the absence of a competitive bidding process when the aid is granted based on an aid scheme. In this case, the aid intensity shall not exceed 20% of the eligible costs. The aid intensity may be increased by 20 percentage points for medium-sized enterprises and by 30 percentage points for small enterprises. The aid intensity may also be increased by 15 percentage points for investments located in assisted areas designated in an approved regional aid map in force at the time of provision of the aid in application of in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas designated in an approved regional aid map in force at the time of provision of the aid in application of Article 107(3), point (c), of the Treaty;
 - ii. In order to ensure that effective competition can take place, the aid granted to any one undertaking must not exceed 40% of the total budget of the scheme concerned;

⁴⁸ Competitive bidding process means a non-discriminatory bidding process that provides for the participation of a sufficient number of undertakings and where the aid is granted on the basis of either the initial bid submitted by the bidder or a clearing price. In addition, the budget or volume related to the bidding process is a binding constraint leading to a situation where not all bidders can receive aid. The competitive bidding should fulfil all of the following conditions: (a) the aid award shall be based on objective, clear, transparent and non-discriminatory eligibility and selection criteria, defined ex ante and published at least six weeks in advance of the deadline for submitting applications, to enable effective competition; (b) during the implementation of a scheme, in case of a bidding process where all bidders receive aid, the design of said process shall be corrected to restore effective competition in the subsequent bidding processes, for example, by reducing the budget or volume; (c) ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results) shall be excluded; (d) at least 70% of the total selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process shall be defined in terms of aid in relation to the project's contribution to the environmental objectives of the measure, for example aid requested per recharging or refuelling point.

- iii. Where the recharging or refuelling infrastructure is open for access by users other than the aid beneficiary or beneficiaries, non-discriminatory access must be provided to users, including in relation to tariffs, authentication and payment methods and other terms and conditions of use. The fees charged to users other than the aid beneficiary or beneficiaries for using the recharging or refuelling infrastructure shall correspond to market prices;
- iv. Operators of recharging or refuelling infrastructure that offer or allow contract-based payments on their infrastructure shall not discriminate between mobility service providers, for example by applying preferential access conditions, or through price differentiation without an objective justification.
- v. Member States must verify the necessity of aid to incentivise the deployment of recharging or refuelling infrastructure of the same category (for example, for recharging infrastructure: normal or high power) through an *ex ante* open public consultation or an independent market study which are no older than one year at the moment of the entry into force of the aid measure. This requirement does not apply where the recharging and refuelling infrastructure is not accessible to the public. The necessity of aid can also be presumed where vehicles powered exclusively by electricity (for recharging infrastructures) or vehicles powered at least partially by hydrogen (for refuelling infrastructures) represent respectively less than 3% of the total number of vehicles of the same category registered in the Member State concerned;
- vi. Any entrustment to a third party to operate the infrastructure must be assigned on an competitive, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.
- vii. Where aid is granted for the deployment of new recharging infrastructure that allows for a transfer of electricity with a power output of less than or equal to 22 kW, the infrastructure must be capable of supporting smart recharging functionalities.

Measures supporting the deployment of recharging or refuelling infrastructure that do not fulfil the conditions set out in the proposed Article 36a GBER have to be notified to the Commission.

52. In addition to possibilities under Article 36a GBER, investments linked to the ones covered by this guiding template may also be supported under other GBER provisions, in particular Articles 14 (regional investment aid), 17 (investment aid to SMEs), 21 (risk finance aid)^{49,50}, 56b and 56c (conditions for support for port infrastructures in maritime or inland ports) and 56d-56f (Conditions for aid involved in financial products supported by the InvestEU Fund), provided that the provisions of Chapter I of the GBER are also complied with. In particular;
- **Article 14 GBER** allows granting State aid for productive investments of undertakings of all sizes, provided the investments take place in an assisted

⁴⁹ Also possibly Article 22 GBER (aid for start-ups).

⁵⁰ National promotional banks may be used to implement compatible State aid measures (under the GBER or following notification). In general, the activities of such institutions should be limited to address market failures in order to prevent crowding-out of private initiatives.

area⁵¹. The maximum aid intensities applicable in the assisted areas are established for each Member State in the regional aid maps and can vary across the assisted areas. The eligible costs⁵² area investment costs in tangible and intangible assets, estimated wage costs arising from the job creation as a result of the eligible investment or a combination thereof. Maximum aid intensities for large enterprises can go up to 50% in the least developed areas⁵³. The investment shall be maintained in the recipient area for at least 5 years (3 years if the beneficiary is an SME). Additional bonuses apply for investments by small enterprises (20%) and medium-sized enterprises (10%). Aid for relocation purposes are not covered by the GBER and must be notified.

- **Article 17 GBER** allows granting State aid to SMEs with a notification threshold of EUR 8.25 million per undertaking per investment project for investments and job creation anywhere in the Union⁵⁴. The maximum aid intensity is 20 % of eligible costs for small enterprises and 10 % for medium-sized enterprises.
- **Article 21 GBER** allows to support SMEs' access to finance, with no constraints in terms of sectors and regions of activity. In these situations, compatibility requirements include inter alia that eligible SMEs are unlisted and typically operating for less than seven years. In addition, independent private investors should normally provide at least 40% of the total “aided” risk finance investment.
- Articles 56b and 56c allow for investment aid for recharging and refuelling infrastructure in ports (both maritime and inland ports respectively) supplying vehicles, mobile terminal equipment and mobile groundhandling equipment with electricity, hydrogen, ammonia and methanol. For more information on Article 56c GBER, see Template “Other low emission transport modes – rail and inland waterway (rail infrastructure, transshipment terminals, rail maintenance workshops, acquisition / retrofitting of rail rolling stock and acquisition/retrofitting of inland waterway fleet) and short-sea shipping (aid for the launching of short-sea shipping services)”.
- **Article 56e, paragraph 6, letter (a)(v) GBER**, allows granting State aid to the final beneficiary under a financial product supported by the InvestEU Fund, for

⁵¹ “Assisted areas” means areas designated in an approved regional aid map valid at the time of award of the aid in application of Articles 107(3)(a) and (c) TFEU.

⁵² Please note that the references to ‘eligible costs’ in this guiding template are to be understood exclusively for the purposes of State aid. Therefore, they have no bearing on whether a particular measure and its associated cost can be financed or not by the Facility.

⁵³ In some cases where the Regional Aid Guidelines provide for specific bonuses, even higher intensities can be applied. The applicable aid intensities are defined for the period from 2022 in the new regional aid maps.

⁵⁴ Eligible investments are i) setting up a new establishment; ii) extension of an existing establishment iii) diversification of output of existing establishment into new additional products, iii) fundamental change in the overall production process of an existing establishment, or v) acquisition of assets belonging to an establishment on the condition that the establishment has closed down or would have closed down had it not been purchased, the assets are purchased from third parties unrelated to the buyer and the transaction take place under market conditions.

recharging or refuelling infrastructure that supplies vehicles with electricity or hydrogen⁵⁵.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Investment 1: Create a subsidy scheme to allow cities/agglomerations to procure smart, safe and clean public transport fleets, and their related infrastructure, as well as publicly accessible recharging/refuelling points for private and commercial zero and low emissions vehicles: *As regards low emission infrastructures, local managing authorities have various options under the GBER in case aid would be present. For instance, the measure can be immediately implemented without prior notification to the Commission if it respects the GBER provisions for investment aid for recharging or refuelling infrastructure.*

C. Service of General Economic Interest

53. If the recharging or refuelling infrastructure is necessary for the provision of services that are entrusted as a SGEI and such infrastructure is intended to be used exclusively by the beneficiary, its deployment may be considered as part of the SGEI mission and therefore be financed in compliance with the applicable State aid rules on SGEI. This is the case, in particular, where the Member State concerned imposed the use of zero- or low-emission vehicles for the discharge of the public service obligations. Depending on the sector concerned, compatibility with the internal market of public service compensation qualifying as State aid is assessed under Article 106(2) TFEU or Article 93 TFEU.
54. Member States enjoy a wide discretion in the definition of SGEIs⁵⁶, which can be questioned by the Commission only in the event of manifest error.

a. SGEI in the land passenger transport sector: Regulation (EC) No 1370/2007⁵⁷

55. In case public services are entrusted as a SGEI in the area of passenger public transport by road, compensation for those services should be established in line with the provisions of **Regulation (EC) No 1370/2007**, on the basis of Article 93 TFEU⁵⁸. If the recharging or refuelling infrastructure is necessary and intended to be used for the provision of the SGEI⁵⁹, aid for its deployment can be covered by the public service compensation. If the conditions set out in that Regulation are complied with, aid to the service provider in the form of compensation is exempted from prior notification to the Commission.

⁵⁵ For aid under Article 56e GBER to be compatible, the conditions laid down in Article 56d GBER should also be complied with, in addition to those general conditions set out in Chapter I, and the conditions of Article 56e GBER itself.

⁵⁶ See, among others, Judgment of the Court of First Instance of 15 June 2005, *Olsen v Commission*, case T-17/02, paragraph 216.

⁵⁷ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 13.

⁵⁸ This provision constitutes the *lex specialis* with regard to Article 106(2) TFEU and lays down the rules applicable to public service compensation in the land transport sector.

⁵⁹ This may be the case, for instance, of an undertaking providing public passenger transport services by bus as a SGEI, which needs to deploy dedicated recharging or refuelling infrastructure necessary for the operation of its own vehicles.

*b. SGEI Decision*⁶⁰

56. Where the recharging or refuelling infrastructure is necessary to discharge public service obligations in sectors other than land transport (for example, the postal sector), the compatibility of the aid for its deployment may be assessed as part of the public service compensation, on the basis of Article 106(2) TFEU.
57. State aid for the compensation of a SGEI up to EUR 15 million per year (on average over the whole duration of the entrustment), is exempted from notification on the basis of the SGEI Decision, provided that the criteria of that Decision are met. These are: (i) definition and entrustment of the SGEI, (ii) parameters of compensation established *ex ante* in a transparent manner, (iii) amount of compensation not exceeding the costs for the provision of the SGEI and a reasonable profit, and (iv) a mechanism to ensure the absence of overcompensation.

V. Instances in which notifying for State aid clearance is necessary

58. If the measure constitutes State aid and does not meet the conditions allowing an exemption from notification, a notification to the Commission for State aid clearance is required. The aim of the present section is to assist Member States in identifying and providing the necessary information to the Commission in the context of pre-notifications and notifications, bearing in mind that the Commission will assess all State aid notifications received from Member States in the context of the Facility as a matter of priority.
59. If the deployment of recharging or refuelling infrastructure is linked to the discharge of public service obligations in the transport sector entrusted as SGEIs, the SGEI Framework would apply, unless the SGEIs concern land transport services, in which case the Commission will assess the compatibility of the aid under Article 93 TFEU. Finally, support for the deployment of recharging or refuelling infrastructure may be notified to and assessed by the Commission under the Regional aid Guidelines, provided the conditions set out therein are fulfilled.

A. Procedure for pre-notification and notification

60. In case the planned investment entails State aid and is not exempt from notification, the Member State should, in compliance with Article 108(3) TFEU, proceed to notify the measure to the Commission for approval before implementation.
61. The Commission is committed to assess and treat those cases as a matter of priority and to engage with national authorities early on, in order to address problems in ‘real time’ in the context of the preparation of their Recovery and Resilience Plans. Therefore, informal contacts and pre-notifications are encouraged as soon as possible.
62. The Commission aims to complete the assessment of notified State aid measures within six weeks of receiving a complete notification from the Member State.

B. Relevant legal bases for compatibility

⁶⁰ Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.1.2012, p. 3.

a. *Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG⁶¹)*

63. Aid for the construction, installation, upgrade or extension of recharging or refuelling infrastructure is assessed under Section 4.3.2 of the CEEAG.
64. When carrying out its compatibility assessment under Section 4.3.2 of the CEEAG, the Commission will take into account the following aspects.
65. First, to be found compatible under the CEEAG, the aid must facilitate an economic activity, have an incentive effect and not entail a breach of relevant EU law.
66. Second, the aid should be necessary in that it should target residual market failures and should incentivise the deployment of recharging or refuelling infrastructure of the same category as the infrastructure that would be deployed with State aid, in that similar infrastructure is not likely to be developed on commercial terms in the short term. This can be demonstrated by reference to an *ex ante* open public consultation, an independent market study or based on any other appropriate evidence.
67. Should the infrastructure be open for access by users other than the aid beneficiary or beneficiaries, the level of market penetration of clean vehicles as compared to the total fleet of registered vehicles in the Member State at hand and/or the traffic volumes in the region or regions concerned by the measure may demonstrate the need for aid.
68. Third, the aid should be an appropriate instrument. The Member State concerned must demonstrate that (i) the form of aid is appropriate to address the market failure, and (ii) less distortive forms of aid (e.g., repayable advances/loans/guarantees vs grants) are less appropriate. The Member State concerned should consider the potential for new regulatory interventions to stimulate the shift towards clean mobility and the expected impact.
69. Fourth, the aid should be proportionate. As a general rule, the aid must be granted following a competitive bidding process. The design of the measure should provide incentives for applicants to bid for projects concerning recharging or refuelling infrastructure supplying only renewable electricity/renewable hydrogen. Where appropriate, bid caps may be introduced and should be justified on the basis of quantification of costs and revenues.
70. A competitive bidding process is not required in the following situations: (a) where the expected number of participants is insufficient to ensure effective competition; (b) a competitive bidding process cannot be organized; (c) the recharging/refuelling infrastructure is intended exclusively/primarily for use by undertakings active in the sector of public passenger transport by land, rail or water; (d) the recharging/refuelling infrastructure is intended exclusively/primarily for use by the beneficiary (i.e. dedicated infrastructure), if duly justified; or where (e) the recharging/refuelling infrastructure is intended for use by vehicles for which the market penetration rate or the traffic volumes in the Member State/region are very limited.
71. If no competitive bidding is organized, the aid amount is determined on the basis of a funding gap analysis. The Member State concerned needs to conduct *ex post* monitoring to verify assumptions made about the level of aid required and put in place

⁶¹ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, C/2022/481, OJ C 80, 18.2.2022, p. 1–89.

a claw back mechanism. The aid amount cannot exceed the funding gap as demonstrated by the quantification.

72. Alternatively, the aid may be considered proportionate if it does not exceed 30% of the eligible costs or, where the recharging or refuelling infrastructure supplies only renewable electricity or renewable hydrogen, 40 % of the eligible costs. The aid intensity may be increased by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (c), of the Treaty.
73. In cases where the proportionality of aid is established on the basis of a percentage of eligible costs (rather than via a competitive bidding process or a funding gap analysis), the eligible costs are all the investment costs for the construction, installation, upgrade or extension of recharging or refuelling infrastructure. For instance, these may include the costs of (a) the recharging or refuelling infrastructure and related technical equipment; (b) the installation of or upgrades to electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit and for ensuring the smart readiness of recharging infrastructure, (c) civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.
74. Where a project includes the on-site production of renewable electricity or renewable or low-carbon hydrogen or the on-site storage of electricity or renewable or low-carbon hydrogen, the eligible costs may include the investment costs of the production units or of the storage facilities.
75. Fifth, the aid should not have an undue negative effect on competition and trade.
76. Aid for refuelling infrastructure supplying natural gas may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market or where it locks in certain technologies. However, aid for LNG refueling infrastructure for heavy-duty vehicles for road transport may be found compatible if not granted after 2025. The Commission will take into account whether the aid contributes to achieving targets set out in Union legislation on the deployment of alternative fuel infrastructure.
77. The negative effects on competition of aid for refuelling infrastructure supplying fuels produced using fossil-based sources or energy, including fossil-based hydrogen, where greenhouse gases (“GHG”) are not effectively captured, are unlikely to be offset.
78. Aid for hydrogen refuelling infrastructure that does not exclusively supply renewable hydrogen or low carbon hydrogen may be regarded as not having long term lock-in effects or not displacing investments into cleaner technologies if the Member State concerned demonstrates a credible pathway towards the phasing out of hydrogen that is not renewable or low-carbon to supply the refuelling infrastructure by 2035.
79. New recharging infrastructure that allows for a transfer of electricity with a power output of up to 22 kW (‘normal power’) must be capable of supporting smart recharging functionalities.
80. The design of the measure should ensure that aid does not result in the creation or the strengthening of market power positions. The Member State concerned must ensure

that the design of the aid measure contains appropriate safeguards to address that risk. Those safeguards can include, for instance, the establishment of a maximum percentage of the budget for the measure that can be allocated to one single undertaking.

81. Sufficient safeguards must be put in place to ensure that operators of recharging or refuelling infrastructure that offer or allow contract-based payments on their infrastructure do not unduly discriminate between mobility service providers, for example by applying unjustified preferential access conditions, or through unjustified price differentiation.
82. As regards recharging or refuelling infrastructure that is open for access by users other than the aid beneficiary or beneficiaries, including publicly accessible recharging or refuelling infrastructure, the infrastructure must be accessible to the public and provide non-discriminatory access to users, including, as appropriate, in relation to tariffs, authentication and payment methods and other terms and conditions of use. In addition, the Member State concerned must ensure that the fees charged to users correspond to market prices.
83. Finally, any concession or other entrustment to a third party to operate the recharging or refuelling infrastructure must be awarded on a competitive, transparent and non-discriminatory basis.

b. SGEI Framework⁶²

84. State aid for the deployment of recharging or refuelling infrastructure which is necessary for the provision of a genuine SGEI in sectors other than the land transport (for instance, the postal sector), may be assessed on the basis of the SGEI Framework, where the public service compensation does not fall within the scope of the SGEI Decision or the SGEI De minimis Regulation.
85. Under the SGEI Framework, which is based on Article 106(2) TFEU, an aid measure should comply with the following main conditions: (i) entrustment of a clearly defined and genuine SGEI, (ii) compliance with Directive 2006/111/EC⁶³, (iii) compliance with EU public procurement rules, (iv) absence of discrimination, (v) a mechanism to avoid any overcompensation and (vi) transparency.

c. SGEI in the land transport sector: Article 93 TFEU

86. As explained above, Article 106(2) TFEU does not apply to public service compensation in the land transport sector.
87. Therefore, where an undertaking is entrusted with a SGEI in the area of land transport, **Article 93 TFEU is directly applicable** as a legal basis for establishing the compatibility of aid not covered by Regulation (EC) No 1370/2007. Article 93 TFEU provides that “*Aids shall be compatible with the Treaties if they meet the needs of*

⁶² Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.

⁶³ Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L 318, 17.11.2006, p. 17.

coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service”.

88. The aid must thus be notified to the Commission and can only be granted after authorisation. In accordance with the judgment in *Altmark*, compensation in the land transport sector that does not comply with the provisions of Article 93 TFEU cannot be declared compatible with the Treaty on the basis of Article 106(2) TFEU, or on the basis of any other Treaty provision.

d. Regional Aid Guidelines (RAG)⁶⁴

89. Regional investment aid can be granted in almost all sectors of the economy to large companies as well as to SMEs in assisted areas (less developed “a’-areas” and more developed “c areas”), subject to the conditions of the Regional Aid Guidelines. Each Member State has a regional aid map in which the assisted areas are defined. Almost half of the EU is covered by those maps.
90. In 'a'-areas, regional investment aid can be granted to large enterprises and SMEs not only for investments related to new establishments, but also for investments to extend and/or modernise existing establishments.⁶⁵
91. This is also possible for SME's in 'c'-areas. Large enterprises can benefit from regional investment aid in 'c'-areas for their investments relating to new establishments (greenfield investments) and new economic activities (in principle falling into a different class (four-digit numerical code) of the NACE Rev.2 statistical classification of economic activities.
92. Regional investment aid is expressed as a percentage of the total (eligible) cost of an initial investment ('regional aid intensity') and can be granted up to the maximum aid intensity applicable in the respective assisted area. In principle, the less developed the region is, the more regional aid can be granted. For notified aid the Commission would verify whether the aid amount does not exceed the net extra costs of implementing the investment in the area concerned.
93. Member States considering granting regional investment aid for this scale-up initiative can notify the project under the Regional Aid Guidelines. In order to be deemed compatible the aided project must:
- i. contribute to the objective of regional sustainable development (e.g. taking account of direct and indirect jobs created, sustainability (duration) of the investment in the region, spill-over effects on the regions;
 - ii. have an incentive effect (i.e. without the aid the investment would not be sufficiently profitable or would have happened somewhere else in more developed regions or outside the EEA;

⁶⁴ Guidelines on regional State aid for 2014-2020, OJ C 209, 23.07.2013, p. 1, and from 1/1/2022, Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1.

⁶⁵ Eligible investments are i) setting up a new establishment; ii) extension of the capacity, iii) diversification of output of existing establishment into products not previously produced in the establishment or iv) a fundamental change in the production process of an existing establishment, v) acquisition of assets belonging to an establishment that has closed down or would have closed down had it not been purchased in the establishment and is bought by investor unrelated to the seller.

- iii. be limited to the minimum necessary and in any event below the maximum aid intensity for the region; and
- iv. potential negative effects on competition and trade between Member States need to remain limited (e.g. aid for an undertaking with lower market power is less harmful than for undertakings with significant market share).

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Clean, smart and fair urban mobility](#)

Investment 1: Create a subsidy scheme to allow cities/agglomerations to procure smart, safe and clean public transport fleets, and their related infrastructure, as well as publicly accessible recharging/refuelling points for private and commercial zero and low emissions vehicles: *As regards low emission infrastructures, local managing authorities have various options under the GBER in case aid would be present. [...]. If the GBER conditions cannot be met, aid can be notified for approval under different State aid guidelines, in particular the CEEAG.*

e. Risk Finance Guidelines⁶⁶

- 94. Schemes that do not fit under Article 21 GBER may be found compatible with State aid rules, if designed in line with the Risk Finance Guidelines. This implies, inter alia, that a specific market failure as regards access to finance is demonstrated in an ex ante assessment. In well justified cases, beneficiaries under such schemes could include small- or innovative mid-caps.
- 95. In as far as financial intermediaries are used in the implementation of a specific measure, it is important to verify that also indirect support to these intermediaries complies with the applicable State aid framework.

VI. References

- 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, OJ C 262, 19.7.2016, p. 1.
- 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, OJ L 187, 26.6.2014, p. 1.
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.
- Commission Regulation No 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.
- Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid

⁶⁶ Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, p. 1.

in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.01.2012, p. 3.

- Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, OJ C 8, 11.1.2012, p. 4.
- Communication from the Commission - European Union framework for State aid in the form of public service compensation (2011), OJ C8, 11.01.2012, p. 15.
- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.
- Communication from the Commission — Guidelines on State aid for climate, environmental protection and energy2022, OJ C80, 18.2.2022, p. 1.
- Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 508, 6.12.2021, p. 1-36.
- Guidelines on regional State aid for 2014-2020, OJ C 209, 23.07.2013, p. 1.
- Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1.
- Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.