

DISCLAIMER

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General block exemption Regulation (Reg. 651/2014) – working document Aid for broadband infrastructures

First the general conditions of application of the GBER should be checked (12 conditions / Articles 1 -12) AND then the conditions with regard to Aid for broadband infrastructures.

A. General conditions of application.

GENERAL COMPATIBILITY CONDITIONS	COMPLIANCE CHECK (OK?)
<p>Article 1 - Exclusion of certain activities (§2)</p> <p>Shall not apply to:</p> <ul style="list-style-type: none">• Aid schemes for aid to broadband infrastructures with average annual State aid budget exceeding EUR 150 million from six months after their entry into force (this Regulation may continue to apply for a longer period to any of these aid schemes after having assessed the relevant evaluation plan notified by the Member State to the Commission, within 20 working days from the scheme's entry into force);• any alterations of schemes referred above other than modifications which cannot affect the compatibility of the aid scheme under this Regulation or cannot significantly affect the content of the approved evaluation plan• Aid to export related activities• Aid contingent upon use of domestic over imported goods.	
<p>Article 1 - Exclusion of certain sectors (§3)</p> <ul style="list-style-type: none">• Fishery and aquaculture* (as in Reg 1379/2013)• Primary production of agricultural products*• The processing and marketing of agricultural products* if the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or when the aid is conditional on being partly or entirely passed on to primary producers;• Aid to facilitate the closure of uncompetitive coal mines (Council decision 2010/787); <p><i>* If undertaking active also in sectors within the scope of the this Regulation, the Regulation applies to aid granted in respect of these sectors provided that MS ensures that the activities in the excluded sectors do not benefit from the aid</i></p>	

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Article 1 - Exclusion of companies concerned by the Deggendorf rule (§4)	
Shall not apply to aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to outstanding recovery order following a previous Com. Dec. declaring an aid illegal/incompatible and shall not apply to ad hoc aid to such an undertaking	
Article 1 - Exclusion of companies in difficulty (§4)	
Shall not apply to aid to undertakings in difficulty	
Article 1 - Exclusion of aid measures violating Union Law (§5)	
Shall not apply to State aid measures, which entail a non-severable violation of Union law, in particular: (a) obligation for the beneficiary to have its headquarters or to be predominantly established in the relevant Member State. Requirement for an establishment or branch in the aid granting Member State at the moment of payment of the aid is allowed. (b) obligation to use nationally produced goods or national services; (c) restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.	
Article 4 - Individual notification thresholds	
Shall not apply to aid which exceed: <ul style="list-style-type: none">• Aid for broadband infrastructures: EUR 70 million total costs per project The thresholds shall not be circumvented by artificially splitting up the aid schemes or aid projects.	
Article 5 – Transparency of aid	
Shall apply to transparent aid and shall be considered as transparent: <ul style="list-style-type: none">• Grants and interest rate subsidies• Loans (where gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant)• Guarantees (gross grant equivalent calculated on the safe-harbour premiums laid down in a Commission Notice or	

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<p>gross grant equivalent accepted before implementation on the basis of the Com Notice on Guarantees and the approved calculation methodology explicitly addresses the type of the guarantee and the type of the underlying transaction at stake in the context of the application of the GBER)</p> <ul style="list-style-type: none">• Tax advantages (when cap to ensure that threshold is not exceeded)• Repayable advances (if the total nominal amount of the repayable advance does not exceed the thresholds applicable under this Regulation or if, before implementation of the measure, the methodology to calculate the gross grant equivalent of the repayable advance has been accepted following its notification to the Commission)	
Article 6 - Incentive effect	
<p>Aid can only be exempted if incentive effect:</p> <ul style="list-style-type: none">• Beneficiary submitted aid application to MS prior to the start of work or project with at least the following information:<ul style="list-style-type: none">a) undertaking's name and size;b) description of the project, including its start and end dates;c) location of the project;d) list of project costs;e) type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and amount of public funding needed for the project• Ad hoc aid to large enterprises; in addition to the above, MS has verified before granting the aid that the beneficiary provided documentation demonstrating one or more of the following:<ul style="list-style-type: none">- a material increase in the scope of the project/activity due to the aid, or- a material increase in the total amount spent by the beneficiary on the project/activity due to the aid, or- a material increase in the speed of completion of the project/activity concerned; <p>→Exceptions</p> <ul style="list-style-type: none">• Tax advantages if:<ul style="list-style-type: none">a) the measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; andb) the measure has been adopted and is in force before work on the aided project or activity	

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has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax advantage	
Article 7 - Eligible costs	
<p>For purposes of calculating the aid intensity</p> <ul style="list-style-type: none">• Figures before any deduction of tax or other charge;• Aid granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid• Aid payable in several instalments shall be discounted to its value when granting (same for eligible costs and with interest rates of the moment of granting);• Tranches of aid in tax advantages shall be discounted on the basis of the discount rates applicable at the moment the tax advantages take effect;• Aid in repayable advances which, in the absence of an accepted methodology calculating their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of successful outcome of the project, as defined on the basis of a reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the moment the aid is granted, the maximum aid intensity may be increased by 10 percentage points. <p>Eligible costs & documentation</p> <ul style="list-style-type: none">• Eligible costs supported by clear, specific and contemporary documents.	
Article 8 - Cumulation	
<ul style="list-style-type: none">• Total amount of aid shall be taken into account for thresholds and maximum aid intensities (§1);• If Union funding (not under the control of the Member State) is combined with State aid, only the latter shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law (§2);• Exempted aid may be cumulated with any other State aid if different identifiable costs (§3a);• No cumulation of exempted aid with any other aid on the same eligible costs, partly or fully overlapping, if the result would exceed the highest aid intensity/amount applicable to this aid	

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<p>(§3b);</p> <ul style="list-style-type: none">• State aid exempted under the GBER shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of the GBER (§5).	
Article 9 – Publication and information	
<ul style="list-style-type: none">• Publication on a comprehensive State aid website, at national or regional level of the following (§1):<ol style="list-style-type: none">a. the summary information (see Article 11) or a link providing access to it;b. the full text of each aid measure (see Article 11) or a link providing access to the full text;c. the information on each individual aid award exceeding EUR 500 000 (see Annex III). <p>As regards aid granted to European Territorial Cooperation projects, the information referred to in this paragraph shall be placed on the website of the Member State in which the Managing Authority concerned, as defined in Article 21 of Regulation (EC) No 1299/2013 of the European Parliament and of the Council, is located. Alternatively, the participating Member States may also decide that each of them shall provide the information relating to the aid measures within their territory on the respective websites.</p> <ul style="list-style-type: none">• For schemes in the form of tax advantages, and for schemes covered by Article 16 and 21 (except for SMEs which have not carried out any commercial sale in any market) the conditions set out in paragraph 1(c) of this Article shall be considered fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million (§2)):<ul style="list-style-type: none">- 0,5-1;- 1-2;- 2-5;- 5-10;- 10-30; and- 30 and more.• The information referred to in paragraph 1(c) shall be organised and accessible in a standardised manner, (see Annex III), and shall allow for effective search and download functions. The information referred to in paragraph 1 shall be published within 6 months	

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<p>from the date the aid was granted, or for aid in the form of tax advantage, within 1 year from the date the tax declaration is due, and shall be available for at least 10 years from the date on which the aid was granted (§4).</p> <ul style="list-style-type: none"> Member States shall comply with the provisions of this Article at the latest within two years after the entry into force of this Regulation (i.e. 01/07/2016) (§6). 	
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For definitions on concepts: article 2 (*sub* 133-139) (pay attention to the new definition of undertaking in difficulty)

Reporting: article 11

Monitoring: article 12

Withdrawal of the benefit of the block exemption: article 10

B. Specific conditions for aid in broadband infrastructures

<p style="text-align: center;">ARTICLE 52 AID IN BROADBAND INFRASTRUCTURES</p>	<p style="text-align: center;">COMPLIANCE CHECK (OK?)</p>
<ul style="list-style-type: none"> Compatible and exempted from notification if General compatibility conditions and conditions of this Article apply (§1); Eligible costs (§2): <ol style="list-style-type: none"> investment costs for the deployment of a passive broadband infrastructure; investment costs of broadband-related civil engineering works; investment costs for the deployment of basic broadband networks; investment costs for the deployment of next generation access (NGA) networks. The investment shall be located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within three years from the moment of publication of the planned aid measure, which shall also be verified through an open public consultation (§3); The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process respecting the principle of technology neutrality (§4); The network operator shall offer the widest possible active and passive wholesale access, 	

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<p>according to Article 2, point 139 of this Regulation, under fair and non-discriminatory conditions, including physical unbundling in the case of NGA networks. Such wholesale access shall be granted for at least seven years and the right of access to ducts or poles shall not be limited in time. In the case of aid for the construction of ducts, the ducts shall be large enough to cater for several cable networks and different network topologies (§5);</p> <ul style="list-style-type: none">• The wholesale access price shall be based on the pricing principles set by the national regulatory authority and on benchmarks that prevail in other comparable, more competitive areas of the Member State or the Union taking into account the aid received by the network operator. The national regulatory authority shall be consulted on access conditions, including pricing, and in the event of dispute between access seekers and the subsidised infrastructure operator (§6);• Member States shall put in place a monitoring and claw-back mechanism if the amount of aid granted to the project exceeds EUR 10 million (§7).	
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