

## RECOVERY AND RESILIENCE FACILITY – STATE AID

### Guiding template: District heating/cooling generation and distribution infrastructure

#### *Link to European Flagships: Renovate and Power Up*

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### **I. Objective of the guiding template**

1. The outbreak of the coronavirus pandemic has changed the economic outlook for the years to come in the European Union. Investments and reforms are needed more than ever to ensure 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 Union to recover in a balanced, forward-looking and sustained manner.
2. The Recovery and Resilience Facility ("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.
3. State aid rules apply in the framework of the Facility. Member States should therefore ensure that all investments comply with EU State aid rules and follow all regular procedures and rules<sup>1</sup>.
4. With this guiding template, DG Competition aims at assisting Member States upfront with the design and preparation of the State aid elements of their recovery plans, and to provide guidance on the State aid-related aspects of those investments which are expected to be most common.
5. The investments covered by this guiding template have been chosen in line with the European flagships of the Commission's Annual Sustainable Growth Strategy 2021<sup>2</sup>. These flagships, which will result in tangible benefits for the economy and citizens across the EU, aim at strengthening economic and social resilience, addressing issues that are common to all Member States, need significant investments, create jobs and growth and are needed for the digital-green twin transition. Pursuing these flagships will contribute to the success of the recovery of Europe.
6. The guiding template follows a uniform structure, providing sector-specific guidance as to when:

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<sup>1</sup> Commission staff working document - Guidance to Member States Recovery and Resilience Plans - Part 1. Also the relevant public procurement rules must be respected, where applicable.

<sup>2</sup> 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.

- i. Instances in which the existence of State aid may be, 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,<sup>3</sup> 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 refers to investments in the construction or upgrade of district heating networks, consisting of both *heat generation facilities* (heating/cooling production plants) and *distribution network* (both “primary” and “secondary” network of pipelines to supply heat to consumers). Reference to district heating is to be interpreted as district heating and/or cooling systems (DH/CS), depending on whether the networks supply heat or cooling jointly or separately.
9. In line with the *Renovate* flagship, district heating investments are needed to allow for modern, efficient district heating and cooling networks with minimum losses in communities supplying households and commercial users. In addition, under the *Power Up* flagship, development of district heating networks based on renewable energy and waste heat would help to switch from fossil fuels-based district heating systems to systems supplied locally from various local renewable and waste heat sources, increasing the share of renewable energy in the heating and cooling sector and helping reducing greenhouse gas (GHG) and other pollution.
10. Investments that are the object of this guiding template would typically relate to the construction or upgrade of *heat generation facilities* to render them energy efficient, in line with the Energy Efficiency Directive<sup>4</sup> (EED) and targets set therein, as well as to promote sustainable and GHG and other pollution-reducing energy sources, including renewable energy sources (RES) or waste heat. In combination or separately from investment on heating generation, investments may concern also construction or upgrade of *heat distribution networks* to reduce losses and increase efficiency, also through smart and digital solutions.
11. Investments in *district heating generation* and *distribution networks* may include thermal storage solutions, in particular when linked to RES or waste heat generation sources. In this last case, the storage investment will be considered as part of the overall district heating or RES generation investment.

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<sup>3</sup> Available at [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en#example-of-component-of-reforms-and-investments](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#example-of-component-of-reforms-and-investments).

<sup>4</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, OJ L 315, 14.11.2012, p. 1, as amended by Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018.

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

12. 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.

#### A. *No economic activity*

13. Provision of district heating, both heat generation and supply, and the operation of the distribution network are normally economic activities, as heat services are offered on the market in exchange for remuneration through tariffs. The circumstance that the service is offered on a ‘non-profit’ basis (because revenues from tariffs are set administratively and do not enable covering all costs or earning a profit) cannot change the qualification of the activity as economic<sup>5</sup>, as the (district heating) service is offered on a market, in competition with other forms of heating solutions.
14. In specific instances, support for activities which are not of an economic nature, i.e. are not used for offering goods or services on the market, is not considered aid.
15. With regard to district heating networks, this is for example the case of direct support to public authorities for district heating systems exclusively for state-owned/public buildings in which no economic activities are conducted.
16. In such scenario, the upgrade/renovation of district heating solutions will not be deemed an economic activity provided that (i) the installation is used for self-consumption only (with the possibility to sell up to maximum 20% of the production of that specific heating installation to the grid or a third party), and (ii) the capacity of that installation has been dimensioned for self-consumption.<sup>6</sup>
17. Also, Member States may have in place measures to provide direct economic support for consumers in situation of “energy poverty”. Provided that such measures are targeted at users, not exercising any economic activity and in situation of “energy poverty”, and that such measures do not grant any indirect advantage to any heating provider, they shall in principle fall out of State aid rules.

#### B. *No State resources*

18. Measures that do not involve the transfer of public resources<sup>7</sup> exclude the existence of State aid<sup>8</sup>.

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<sup>5</sup> See also paragraph 9 of the 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 (“Notice on the notion of State aid”).

<sup>6</sup> For further details on whether an activity is or is not an economic activity, see the Notice on the notion of State aid. See, in particular Section 2, for example on health care and education, relevant in cases of district heating networks serving public entities/municipalities as well as schooling and health services.

<sup>7</sup> 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. Note that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

19. Despite this general principle, it appears unlikely that there would be no State resources in cases of support measures for district heating investments, both for generation and distribution network. It could however not be excluded that a Member State would render connection to district heating system mandatory for users, and/or oblige co-owners in a multi-apartment building (covered by the service) to pay part of the heat service, even in absence of an individual contract<sup>9</sup>. Should this be financed exclusively through private resources and not through a levy, and in absence of control of the State over the resources, such type of measures would typically not entail a transfer of State resources. Such measures would however need to comply with EU law on internal market, consumer protection as well as RED II, notably on the right of disconnection of district heating users in case of alternative sustainable heating systems<sup>10</sup>.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Reform 1: One-stop shops:** *to address administrative barriers in providing permits, certification and to support households and businesses with legal, technical (including energy audits) and financial advice.*

**Reform 4: Supportive legislative package for energy and resource efficiency in buildings:** *To further incentivise energy efficiency measures in residential, commercial and public buildings, and social infrastructures with a particular focus on multi-apartment buildings, the national government will introduce revisions to the building legislation.*

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Power Up](#)

**Reform 2: Accelerating permitting of new renewables installations, including simplified procedures for re-powering:** *This reform will be achieved through the revision of the national legislation governing the installation of renewables installation. While some of these actions contribute to the implementation of the revised Renewable Energy Directive (Directive (EU) 2018/2001), a number of them are also meant to address the specific national barriers identified, including through contacts with stakeholders. [...] In addition [...], procedures underpinning the permitting process will be made fully digital, and training courses will be*

<sup>8</sup> The proposal for a Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility (COM/2020/408 final) does not exclude the possibility for Member States to channel part of their non-repayable contribution from the RRF through the Renewable Energy Financing Mechanism (Commission Implementing Regulation (EU) 2020/1294 of 15 September 2020 on the Union renewable energy financing mechanism. OJ L 303, 17.9.2020, p. 1, 'REFM'), established under the Governance Regulation. Moreover, the Guidance to Member States on recovery and resilience plans explicitly refers to this possibility (SWD (2020) 205 final. 17.9.2020, see page 14). If a Member State uses (part of) its non-repayable contribution to make an unconditional payment to the REFM, the amount paid enters the Union budget and is allocated by the REFM to specific projects selected by the Commission on the basis of a grant award procedure. Therefore, the Member State does not have control over the disbursement of the funds by the REFM, and the link between the Member State and the selection and allocation of the beneficiary of support is broken. Therefore, the support by the REFM using the funds received from the Member State would no longer be imputable to the State and would not constitute State aid. As a consequence, the contributions to projects that are financed through the REFM would not be subject to State aid rules.

<sup>9</sup> For case-law on the compatibility with EU law for the possibility for MS to oblige owners of apartments in a multi-apartment building to pay part of the charges of the district heating service see Judgment of the Court of Justice of 5 December 2019, *EVN Bulgaria Toplofikatsia, Toplofikatsia Sofia*, C-708/17 and C-725/17, ECLI:EU:C:2019:1049.

<sup>10</sup> See Article 24 of RED II.

provided for project holders. The country will also keep under review any additional needs for administrative, financial and human resources for permitting authorities at national, regional and local level, and take action if a need is identified to increase their capacities. [...] This measure has not been identified as raising concerns regarding State aid rules.

C. *No selectivity*

20. 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.
21. This can be the case, for example, of a general reform of a tax or of the social security contributions under certain conditions. However, this possibility appears difficult to conceive for the investments at stake, as support under this guiding template would typically be based on measures, either *ad hoc* or based on a scheme, which typically select beneficiaries, targeting undertakings providing district heating generation or operating the heat distribution network or energy-efficiency investments.

D. *No advantage*

22. Measures that do not entail an economic advantage exclude the existence of State aid. The presence of advantage needs to be examined at the level of the owner/developer of the infrastructure, as well as at the level of the operator and the end-user.

a. *No economic advantage at the level of the owner/developer*

23. If it is proven that the State acted under the same terms and conditions as a private investor in a comparable situation when providing the necessary funding for the development/acquisition or upgrade of a district heating distribution network, then State aid is not involved<sup>11</sup>. 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 situation<sup>12</sup>; 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 risk and future expectations<sup>13</sup>.
24. Note, however, that the existence of consecutive State interventions concerning the same district heating network project might invalidate the conclusion that a similar measure would also have been undertaken by a market economy investor<sup>14</sup>.

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<sup>11</sup> For a precedent case where a Member State re-acquired the ownership of the district heating system and this was qualified as not entailing State aid, see Commission decision of 15.4.2019 in case SA.52390 (2019/N) – Germany – *Reacquisition of the Hamburg District Heating Network*.

<sup>12</sup> For more details, see the Notice on the notion of State aid, paragraphs 86 to 88.

<sup>13</sup> For more information see in this respect the Notice on the notion of State aid, chapter 4.2 and in particular paragraphs 101 to 105.

<sup>14</sup> See in this respect also the Notice on the notion of State aid, paragraph 81.

*b. No economic advantage at the level of the operator*

*i. Selection of operator through a tender or fees that are otherwise in compliance with the Market Economy Operator Principle*

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 district heating network is less than what they would have had to pay for a comparable infrastructure under normal market conditions. For instance, in cases where, under normal market conditions, operators would have to increase their tariffs/remuneration to a level not covered by demand, 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 district heating network is assigned **for a positive price** to an operator/concessionaire on the basis of a competitive, transparent, non-discriminatory and unconditional tender<sup>15</sup> in line with the principles of the TFEU on public procurement<sup>16</sup>, 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 district heating network 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 (negative price).
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 operator/concessionaire are in line with normal market conditions through (i) benchmarking with comparable situations<sup>17</sup>, or (ii) on the basis of a generally-accepted standard assessment methodology<sup>18</sup>.

*c. No economic advantage at the level of the end-user*

28. If the operator of the district heating network 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 undertakings<sup>19</sup>.
29. An economic advantage at the level of the user(s) can be excluded if (i) the district heating network 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 terms<sup>20</sup>.

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<sup>15</sup> As described in the Notice on the notion of State aid, paragraphs 89 to 94.

<sup>16</sup> 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.

<sup>17</sup> See the Notice on the notion of State aid, paragraphs 97 to 100.

<sup>18</sup> See the Notice on the notion of State aid, paragraphs 101 to 105.

<sup>19</sup> See the Notice on the notion of State aid, paragraph 225.

<sup>20</sup> See the 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 points 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

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

*a. De minimis aid*

30. 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, and 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.
31. 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 respected<sup>21</sup>. Notably, the aid must be “transparent” within the meaning of Article 4 of the *de minimis* 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 *de minimis* Regulation must be complied with.

*b. No potential effect on trade: purely local impact*

32. There may be in principle instances of support measures that have a purely local impact and consequently have no effect on trade between Member States.
33. This could be the case if the support is granted directly to the district heating provider in a very limited area within a Member State and which is unlikely to attract customers or investors from other Member States. In this very exceptional situation – given the high degree of liberalisation in energy markets –, effect on trade could be excluded only if it can be foreseen that the measure will not 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 relevant region/Member State). Evidence to demonstrate that there is no effect on trade could include data showing that there is only limited use of the infrastructure from outside the Member State and that cross-border investments in the relevant market are minimal or unlikely to be adversely affected.<sup>22</sup> This last circumstance is hard to show in cases of district heating networks, as well as for competing alternative heating systems, which are normally based on technological solutions capable of attracting participation of investors specialised in the energy sector.

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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.

<sup>21</sup> 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. 9.

<sup>22</sup> See the Notice on the notion of State aid, paragraph 197.

*c. No distortion of competition (legal or natural monopoly)*

34. District heating generation is traditionally integrated and operated jointly with the distribution network by one single undertaking. However, based on sectorial legislation (RED II) and competition policy, district heating generation is increasingly managed separately from the distribution network.
35. In principle, district heating (heat) generation and distribution are market activities in competition with individual heating solutions for residential and commercial customers. While this holds true in all cases of fully integrated activity of both heat provision and distribution network, in some cases the operation of the heat distribution network may be subject to a special status, with significant consequences on the State aid treatment.
36. As regards investments for the upgrade of the distribution network (i.e. the heat pipelines), the Communication on the Sustainable Europe Investment Plan<sup>23</sup> (SEIP Communication) clarified that “*support, which is limited to district heating distribution networks, can under certain circumstances be considered to fall outside of State aid control as an infrastructure measure which does not affect competition and trade*”.
37. This would in particular be the case when “*district heating networks are run in the same way as other energy infrastructure through separation from the heating generation, third-party access and regulated tariffs*”. This relates to situations where the heating distribution network is run as a separate activity from the district heating heat services. In such a case, in order not to distort competition and trade, heat distribution infrastructure would need to be operated by an entity in a situation of legal monopoly and to meet the following requirements:<sup>24</sup>
  - a) the construction and operation of the infrastructure is subject to a legal monopoly (established in compliance with EU law, and in particular with the Treaty rules on competition). This is the case where the district heating distribution network operator is legally the only entity entitled to make a certain type of investment and no other entity can operate an alternative network;
  - b) the legal monopoly not only excludes competition on the market, but also for the market, in that it excludes any possible competition to become the exclusive operator of the infrastructure in question;<sup>25</sup>
  - c) the service is not in competition with other services; and
  - d) if the operator of the energy infrastructure is active in another (geographical or product) market that is open to competition, cross-subsidisation has to be excluded. This requires that separate accounts are used, costs and revenues are allocated in an appropriate way and public funding provided for the service subject to the legal monopoly cannot benefit other activities.

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<sup>23</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable Europe Investment Plan European Green Deal Investment Plan, 14.1.2020, COM(2020) 21 final.

<sup>24</sup> See paragraphs 211-212 of the Notice on the notion of State aid as well as the analytical grid for Energy, sections II.1 and II.2. ([https://ec.europa.eu/competition/state\\_aid/modernisation/grid\\_energy\\_en.pdf](https://ec.europa.eu/competition/state_aid/modernisation/grid_energy_en.pdf)).

<sup>25</sup> In that regard, see also Case C-385/18 *Arriva Italia and Others* EU:C:2019:1121, paragraphs 57–58; Case C-659/17 *Azienda Napoletana Mobilità* EU:C:2019:633, paragraph. 38.

38. A similar scenario would occur in case of the district heating distribution network run in a situation of “natural monopoly” and in presence of the following simultaneous requirements:
- a) an infrastructure typically faces no direct competition, which would be the case where the distribution network of a district heating network cannot be replicated for economic reasons and hence where no operators other than the distribution network operator are involved;
  - b) alternative financing in the network infrastructure, in addition to the distribution network financing is insignificant in the sector and Member State concerned; and
  - c) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large, which is normally the case for district heating distribution networks, when operated by distinct entities as compared to the heating generation and supply service.
39. With regard to this last requirement, in order for the distribution network to be considered as a facility open to ‘users’ and not designed to selectively favour a specific undertaking or be dedicated to one single customer, the district heating network must be ‘open to access’ to heat providers. This can take place only in cases where the heat supply to final users – through the use of the distribution network – by more than one entity is technically and legally possible or when the company providing the heating service has been selected through a competitive process. In this sense, the qualification of the district heating distribution network as ‘infrastructure’ operated in condition of natural monopoly requires (at least potential) competition at the level of the activity of district heating generation or supply.
40. Furthermore, in order to prevent distortion of competition and cross-subsidisation of other activities, in the absence of internal market rules for the heating sector, local/national rules in place shall either prevent the distribution network operator from being active in other markets or require at least separate accounting between the infrastructure operation and the heating generation<sup>26</sup>. In order to make sure that the distribution network is run genuinely as a facility open to users, in line with the SEIP Communication (see points 36 and 37 above), normally – in analogy with internal market rules for the energy sector, notably gas or electricity – specific rules would need to be in place (mandating third party access, unbundling and regulated tariffs), beyond mere ‘separate accounting’.
41. While in the above cases support to district heating distribution infrastructure falls out of State aid rules (subject to specific conditions), any support to district heating generation activity would remain subject to State aid rules.

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

42. 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:

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<sup>26</sup> In line with paragraph 212 of the Notice on the notion of State aid.

*A. Aid covered by an existing State aid scheme (conditions for no notification)*

43. 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.
44. Moreover, any increase of up to 20% of the original budget of an aid scheme already approved by Commission decision is not considered an alteration to existing aid. If this is the only change to a scheme already authorised by the Commission, it does not need to be re-notified to the Commission for approval<sup>27</sup>.
45. In any event, full compliance with the future Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility should be ensured and in particular with Article 14.1a<sup>28</sup>.

*B. General Block Exemption Regulation (GBER)<sup>29</sup>*

46. In cases where the Commission has gained sufficient experience with a given kind of State aid, it may block exempt them, i.e. the Member States do not have to notify such State aids. They only have to inform the Commission thereof.
47. Article 46 GBER on efficient district heating and cooling details the rules applicable to both investments on the construction or upgrade of district heating generation as well as distribution network. In addition, the general provisions of Chapter I must also be complied with in order for the measure to be covered by the GBER.
48. First of all, for investments on the construction or upgrade of (i) the district heating generation facilities and/or (ii) the distribution network, aid can be covered by the GBER only for **energy-efficient district heating and cooling systems**, as defined in Article 2(124) GBER. This provision specifies that in order to qualify as an energy efficient heating and cooling system, the investment must meet the conditions set out in Article 2(41) and (42) of Directive 2012/27/EU (EED): a district heating or cooling system using at least 50% renewable energy, 50% waste heat, 75% cogenerated heat or 50% of a combination of such energy and heat.
49. Based on GBER, support is allowed for upgrading the distribution network, even if the overall district heating system is not yet energy-efficient, subject to the condition that investments to build or upgrade the heating generation facilities to render the system “energy-efficient” are made (and works started) within three years from the starting of the works for the upgrade of the distribution network.
50. The rules on energy-efficient district heating typically cover investments on construction or upgrade of generation facilities based on the above-mentioned sources

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<sup>27</sup> 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, 30.4.2004, p. 1) can be used, whereby the Commission aims to complete the assessment of notified State aid measures within one month.

<sup>28</sup> As currently proposed in the Council Presidency compromise proposal of 7 October 2020.

<sup>29</sup> 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.

which enable the overall system to be or become energy-efficient, thus typically RES powered, using waste heat, or (new investments) based on highly-efficient cogeneration, also using waste<sup>30</sup>.

51. Different thresholds apply to the two type of investments to be covered by the GBER: maximum EUR 15 million (per undertaking per project) if the investment is for the heating generation facility and EUR 20 million (per undertaking per project) of maximum aid for investments on the distribution network.
52. With regard to the **district heating generation investments**:
  - The eligible costs<sup>31</sup> for the production plant shall be the extra costs needed for the construction, expansion and refurbishment of one or more generation units to operate as an energy efficient district heating and cooling system compared to a conventional production plant. The investment shall be an integral part of the energy efficient district heating and cooling system.
  - The aid intensity for the production plant shall not exceed 45% of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.
  - The aid intensity for the production plant may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) TFEU and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) TFEU.
53. With regard to **investments in the district heating distribution network**, as per Article 46(5) and (6) GBER, the eligible costs for the distribution network shall be the investment costs. The aid amount for the distribution network shall not exceed the difference between the eligible costs and the operating profit. The operating profit shall be deducted from the eligible costs ex ante or through a claw-back mechanism.
54. In addition, if supported **investments on generation facilities** – within a district heating network – are based exclusively on **renewable energy sources**<sup>32</sup>, these measures may- in alternative to article 46- be covered by other GBER rules, covering investment aid for renewable energy (Article 41 GBER) as well as Chapter I.

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<sup>30</sup> For details on the characteristics of a “cogenerated heat” production plant and technical requirements in case of upgrade of existing plants, reference is to be done to the applicable EED provisions, notably Article 2(41) and (42) as well as Article 14 which requires that new cogeneration investments need to comply with “high-efficiency” cogeneration features. High-efficiency cogeneration’ means cogeneration which satisfies the definition of high efficiency cogeneration as set out in Article 2(34) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC. For high-efficiency cogeneration investments, not necessarily linked to district heating networks, article 40 GBER is applicable.

<sup>31</sup> 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

<sup>32</sup> As defined in Article 2(109) energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources. It includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems.

55. Based on Article 41 GBER, support schemes to cover the “eligible investment costs”, deducting the costs of the “counterfactual” scenario (i.e. a conventional fuel plant of similar size). The aid intensity, depending on the size of the beneficiary, would range from 45% (large), 55% (medium) to 65% (small undertaking) of the eligible costs, with a top-up up to 15% for assisted regions. In case of competitive bidding process-organised among projects for awarding the aid-, the aid intensity could increase up to 100%.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Power Up](#)

**Investment 1: Supporting the development of district heating networks based on renewable energy and waste heat:** *This measure will first of all support the necessary installations to produce and store the heat which will be used in district heating networks, based on renewable energy and waste sources, by providing financial support to investments; [...] the support will take the form of investment aid [...] investments may be covered by the General Block Exemption regulation for investment aid for renewable energy (Article 41) [...]. The existing national renewable energy support scheme has already been notified and complies with the State aid rules.*

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

56. 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 and relevant 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.

##### A. Procedure for pre-notification and notification

57. 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.
58. For measures that must be notified, 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.
59. The Commission aims to complete the assessment of notified State aid measures within six weeks of receiving complete notification from the Member State.

##### B. Relevant legal bases for compatibility with the Treaty

60. On the basis of Article 107(3)(c) TFEU, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the European Union, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
61. To assess whether State aid for district heating generation and distribution can be considered compatible with the internal market, the Commission analyses whether the

design of the aid measure ensures that the positive effect of the aid on the development of the supported economic activity (positive condition) exceeds its potential negative effects on trade and competition (negative condition).

62. In its compatibility assessment, the Commission will check whether the conditions of Article 107(3)(c) TFEU in conjunction the applicable relevant guidelines are met. In particular:
- The aid measure needs to facilitate the development of economic activities and have an incentive effect without resulting in an infringement of relevant EU law affecting the compatibility test.
  - The aid measure must not unduly affect trading conditions to an extent contrary to the common interest. For those purposes the Commission will check whether the State intervention is needed, appropriate and proportionate and addresses a market failure to achieve the objectives pursued by the measure. The Commission will also verify that transparency of the aid is ensured. Together, these conditions ensure that the distortive effects of the aid are as far as possible limited.
  - The Commission will assess the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States against the common interest. In particular, the Commission will in this step not only consider the benefits of the aid for the beneficiary's economic activity, but also take into account the positive effects of the aid for the community at large.
  - The Commission will finally balance the positive effects with the negative effects of the aid on competition and trade.
63. Support for investments in both district heating generation facilities and distribution network is covered by the Guidelines on State aid for environmental protection and energy 2014-2020<sup>33</sup> (EEAG). For support of investments in district heating heat generation facilities exceeding EUR 15 million, of investments in distribution network exceeding EUR 20 million or for support on either of the two investment types exceeding the respective aid intensities set out in the GBER, a notification is needed to the Commission under section 3.4. EEAG for support energy efficiency, in particular district heating and cooling.
64. In order for investments to be supported under the EEAG, the district heating/cooling system needs to be **energy efficient** per the provisions of the Energy Efficiency Directive, recalled by point 19(14) of the EEAG.
65. **Energy-efficient district heating** systems typically cover investments on construction or upgrade of generation facilities typically RES powered, using waste heat, or (in case of new investments) based on highly-efficient cogeneration (also based on waste), which enable the overall system to be or become energy-efficient. Investments on RES-powered generation and based on waste, need to comply with requirements,

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<sup>33</sup> Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

respectively, on sustainability based on the Renewable Energy Directive II (RED II)<sup>34</sup> and with the waste hierarchy principle, based on the Waste Framework Directive<sup>35</sup>.

66. Furthermore, in the SEIP Communication, the Commission has clarified that – also for investment going beyond the GBER thresholds – in order to render the district heating system energy efficient, Member States can plan “staggered” investments, first in the distribution network and then in the construction/upgrade of generation facilities so long as the start of works (as defined in point 19(44) of the EEAG) on the upgrade of the generation facilities takes place within 3 years of the start of works on the supported network upgrade.
67. With regard to investments in the **district heating distribution network**, support is based on the “funding gap approach” as for energy infrastructure (point 76 of EEAG). Eligible costs consist of the funding gap, which based on point 19(32) of the EEAG is to be calculated as the difference between the Net Present Value (NPV) of positive cash-flows/net discounted revenues and NPV of negative cash-flows/all costs (operating and investment). Support measures may go up to 100% of the funding gap.
68. With regard to the **district heating generation investments**, the eligible costs are the “extra-costs” of the investments as compared to a counterfactual (using conventional fuel of the same size) and maximum aid intensities range from 45% (large) 55% (Medium sized) to 65% (small undertakings) with a top for assisted areas up to 15%. Aid intensity can be increased up to 100% of the eligible costs (“extra-costs”), in case of award through a competitive bidding process. The same rules are applicable for investments on heating generation based on high-efficiency cogeneration, for example based on waste or other fuels<sup>36</sup>.
69. In section 4.3.3 of the SEIP Communication, the Commission has also explained that in order “*to unlock the potential of district heating to contribute to the transition to a climate-neutral economy*”, Member States can now use the funding gap approach also for the district heating generation investments as an alternative to the maximum aid intensities set in the EEAG.
70. Finally, for **investment in heat generation facilities exclusively based on RES**, it is also possible to use the rules for RES investment aid section 3.3.1. of the EEAG, referring to section 3.2. Under these rules, support schemes would cover the “eligible investment costs”, deducting the costs of the “counterfactual” scenario (i.e. a conventional fuel plant of similar size). The aid intensity, depending on the size of the beneficiary, would range from 45% (large), 55% (medium) to 65% (small undertaking) of the eligible costs, with a top-up up to of 15% for assisted regions. In case of competitive bidding process- organised among projects for awarding the aid-, the aid intensity could increase up to 100%.
71. Where Member State have the potential to support district heating projects (for construction or upgrade of generation facilities), **based on several “competing” technologies/fuel sources** (RES or waste heat for example), the organisation of a

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<sup>34</sup> Directive 2009/72/EC of the European Parliament and of the Council, as amended by Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (RED II), OJ L 328, 21.12.2018, p. 82.

<sup>35</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3.

<sup>36</sup> See footnote 31 above on details about investments on high-efficiency cogeneration.

competitive bidding process with selection of projects based on objective criteria, would enable such a scheme to benefit from aid intensity up to 100% of the eligible costs and can simplify the assessment process by ensuring proportionality and reducing competition distortions.

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Renovation wave aimed at enhancing energy and resource efficiency](#)

**Investment 2: Home renovation support scheme to increase the energy and resource efficiency of residential buildings and social housing:** *To address the challenge of high upfront costs of building renovation and the perceived long payback periods, the government will introduce a home renovation scheme. In case the loan guarantee involve undertakings (e.g. landlords, financial intermediaries or energy suppliers) or concern buildings in which economic activities are taking place, compliance with State Aid will be verified before the scheme enters into force. Such State Aid could be compatible under the General Block Exemption Regulation [...] or alternatively under the Environmental and Energy Aid Guidelines (EEAG) for larger schemes.*

See the State aid assessment of the additional examples of investments and reforms contained in the [component – Power Up](#)

**Investment 1: Supporting the development of district heating networks based on renewable energy and waste heat:** *This measure will first of all support the necessary installations to produce and store the heat which will be used in district heating networks, based on renewable energy and waste sources, by providing financial support to investments; [...] the support will take the form of investment aid [...] The country will notify support schemes for renewable energy investment aid, for district heating, generation and network, and for waste heat recovery, whenever the aid thresholds are higher than those foreseen in Article 4 of the General Block Exemption regulation, pursuant to either section 3.3.1.1 (for investment aid for renewable energy sources), 3.4. (district heating), or 3.5 (waste heat recovery) of the Energy and Environment Guidelines.*

## 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 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 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. 15-22
- 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 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.
- Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, 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.