

## **GUIDANCE NOTE AND MEASURE TEMPLATE FOR MS**

**(related to the programming of the Recovery Funds for broadband infrastructure)**

## Table of content

EU Recovery package: link with proposed key actions and major elements.....	3
Background .....	3
The Recovery package agreement in brief.....	4
Programmes' implementation.....	5
Types of investment operations in broadband under measure 321 .....	6
Types of activities that could be funded under the specified in the new Annex III of Regulation No 1698/2005 types of operations related to broadband .....	7
Common eligibility rules for Axis 3 measures.....	9
Eligibility of investments .....	9
Investments in kind .....	9
Basic services for the economy and rural population .....	10
Measure Template .....	12
Demarcation lines with other EU financial instruments .....	14
General background .....	14
Existing demarcation criteria in RDPs .....	14
Funding on broadband infrastructure under the ERDF .....	16
State aid provisions and the programming of the Recovery funds for broadband infrastructure .....	18
Aid intensity rates for broadband infrastructure projects.....	22
A non-exhaustive list of examples of broadband investment in rural areas.....	23
Member States i2010 contact details on broadband.....	24
Regional Development Managing Authorities contact details.....	25

## **EU RECOVERY PACKAGE: LINK WITH PROPOSED KEY ACTIONS AND MAJOR ELEMENTS**

### **Background**

The resources devoted to the fields of diversification of the rural economy and quality of life in rural areas under axis 3 contribute to the overarching priority of the creation of employment opportunities and conditions for growth. Investments in broadband are considered as an important investment field which creates significant direct and indirect employment and growth effects by allowing access to the Internet, on-line services and many more opportunities for on-line marketing, promotion, employment, etc. In addition, the Community strategic guidelines on rural development recognise that upgrading local infrastructure, particularly in the new Member States will be an issue. Significant investment will be undertaken in major telecommunications, transport, energy and water infrastructure over the coming years. Considerable support will be available from the Structural Funds, ranging from trans-European networks to the development of connections to business or science parks. For the multiplier effect to be fully realised in terms of jobs and growth, small-scale local infrastructure, supported within rural development programmes, can play a vital role in connecting these major investments to local strategies for the diversification and development of agricultural and food-sector potential. The potential and the impact could be now even higher with the lifting up of the limitation to small-scale infrastructure for investments in broadband.

In addition, the strategic guidelines have made the take-up and diffusion of ICT in rural areas a priority and they have also recognised that remoteness and peripherality are major problems in certain rural regions.

Member States (MS) have recently agreed in the framework of the Competitiveness Council to reach 100% coverage by 2010-2013. This further supports the objective set by the Commission in the European Economic Recovery Plan for reaching 100% coverage by 2010.

As a result, MS have to exploit all existing funding opportunities, including Community support under rural development and regional policies, for reaching the objective set. Moreover, they should target those areas that are in need of such investments to prevent the further undermining of the social, economic and cultural sustainability of rural areas caused by the currently existing urban-rural divide.

The additional funds coming from the Recovery package should be utilised for filling in existing gaps in broadband coverage to provide a future proof infrastructure capable to support socio-economic life of people and businesses living and operating in rural areas. They should also be targeted at upgrading existing infrastructure to support the delivery of new and better quality services to enable rural areas to compete on a level playing field with more advantaged areas. Investments in passive broadband infrastructure in synergy with other infrastructures is another good way to save on the cost of civil work which allows market players both to decrease their risk on investment in rural areas while enabling them to deliver services over a future proof infrastructure. Recovery funds could be used also for re-enforcement of currently existing broadband commitments under rural development.

## **The Recovery package agreement in brief**

The following elements related to broadband constitute the agreement reached on the rural development part of the Recovery package:

- EUR 1.02 billion of total funding to be injected in rural development programmes (RDPs) in 2009
- Investment fields: Broadband infrastructure & new challenges as identified under the Health-Check of the CAP
- Full flexibility in the usage of the funds
- Lifting up of the limitation to small-scale infrastructure currently existing in Article 56 of Regulation (EC) No 1698/2005 as regards investments in broadband under the recovery package.
- Higher EAFRD co-financing rates (90% for convergence regions and 75% for non-convergence regions) that will apply for Health-Check and Recovery funds and for the specific priority areas defined by the Recovery package modification of Article 16(a), including investments in broadband infrastructure.
- Temporary increase of EAFRD co-financing rate by 10% in 2009 (applies for all measures from all axes)
- Advance payments up to 50% in 2009 and 2010 (applies for all investment measures)
- Ring-fencing at the end of the programming period (applies for the re-programmed money from the HC and the RP)

One element that only applies to the types of operations specified in the context of the Health-check, and not to broadband, is:

- Increase of aid intensity rate for types of operations related to new challenges by 10% for the rest of the programming period

## **Programmes' implementation**

As regards the programmes' implementation, the following major elements apply:

- Submission of modification requests of RDPs: by 15 July 2009
- “n+2” rule
- Payments on projects could be done already in 2009

Investments in broadband infrastructure should be programmed under measure 321 "Basic services for the economy and rural population" under Axis 3 of EAFRD. This measure is possible to be implemented in 3 different ways:

- Normal procedure
- Via the Leader axis
- Combination of the above

In addition, investments in broadband infrastructure could be programmed under measure 413 "Basic services for the economy and rural population" under Axis 4 of EAFRD. In this case, the provisions that apply for measure 321 apply also for measure 413.

## **TYPES OF INVESTMENT OPERATIONS IN BROADBAND UNDER MEASURE 321**

**(NEW ANNEX III OF COUNCIL REGULATION (EC) No 1698/2005)**

- ❖ Creation of and enabling access to broadband infrastructure including backhaul facilities and ground equipment (e.g. fixed, terrestrial wireless, satellite-based or combination of technologies).
- ❖ Upgrade of existing broadband infrastructure
- ❖ Laying down passive broadband infrastructure (e.g.: civil engineering works such as ducts, and other network elements such as dark fibre, etc.) also in synergy with other infrastructures (energy, transport, water, sewerage networks, etc.).

**TYPES OF ACTIVITIES THAT COULD BE FUNDED UNDER THE SPECIFIED IN THE NEW ANNEX  
III OF REGULATION NO 1698/2005 TYPES OF OPERATIONS RELATED TO BROADBAND**

- **Creation of and enabling access to broadband infrastructure including backhaul facilities and ground equipment (e.g. fixed, terrestrial wireless, satellite-based or combination of technologies).**

This type of operation refers to financial support for creation of an open access broadband infrastructure (Local Access Network) in areas with no access to broadband (green field). Based on a technologically neutral specification of a future proof a broadband infrastructure capable to support the required services this measure may include the financing of technical equipment, all necessary civil work (including buildings, ground stations, ducts and masts); installation of network elements and associated facilities (e.g. local digital switches and routers, points of presence); establishment of a back-haul infrastructure to secure an adequate connection to the backbone network; software systems and technical equipment; and, where necessary to achieve 100% coverage, subsidies for the installation of in-building facilities (e.g. termination buses, routers, modems, and/or satellite dishes and terminals). The resulting infrastructure should be open to all operators on a non-discriminatory basis.

- **Upgrade of existing broadband infrastructure (e.g. increased reliability, speed, capacity, reach, better quality of service, etc.);**

This type of operation is for areas with telecom infrastructures that are wholly or in part inadequate or insufficient (i.e. of low quality, low capacity, low reliability or insufficient reach) or incapable (eg: local switches not digitised) of providing a minimum quality of broadband services to the population<sup>1</sup>. The measure should provide the means for targeted upgrades of those network elements and associated facilities that enable a future proof infrastructure to deliver broadband services for medium to long term. This may include the financing of all necessary civil work (including buildings, ground stations, ducts and masts); installation of network elements and associated facilities (e.g. local digital switches and routers, points of presence); establishment of a back-haul infrastructure to secure an adequate connection to the backbone network; software systems and technical equipment (e.g. termination buses, routers, modems, and satellite dishes and terminals). The resulting infrastructure should be open to all operators on a non-discriminatory basis.

- **Laying down passive broadband infrastructure (e.g: civil engineering works such as ducts, and other network elements such as dark fibre etc), also in synergy with other infrastructures (energy, transport, water, sewerage networks, etc).**

Civil works represent on average between 70% and 80% of the costs of building broadband infrastructures. In rural, remote and sparsely populated areas these costs can be even higher, making private investments economically unviable for a private investor. The result is that the economic welfare gains of a fully connected local economy are delayed or foregone. Public authorities can stimulate competition and overcome this lack of effective demand by financing the build-out of open, passive telecommunication infrastructures: the cost of which is the most significant barrier to private investment. This measure involves financial support for civil engineering work (such as ducts, sub-ducts, manholes) and other passive network elements (such as antenna towers, masts, ground stations, dark fibre, distribution frames, etc).

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1. For the moment such details would be reviewed under state aid case examination.

Where possible such construction should be undertaken in synergy with other civil works. The resulting infrastructure should be open to all operators and based on open access architecture.

**Clarification:**

These three types of operations are not mutually exclusive. In certain instances projects are likely to involve a degree of all three types of operations. A combination of these three types of investment should be used to achieve 100% coverage at adequate service quality and in a way that opens networks up to competition.

## COMMON ELIGIBILITY RULES FOR AXIS 3 MEASURES

### Eligibility of investments

In case of investments, Article 55 of Regulation (EC) No. 1974/2006 applies as regards eligible investments:

- (a) the construction, acquisition, including through leasing, or improvement of immovable property;
- (b) the purchase or lease purchase of new machinery and equipment, including computer software up to the market value of the asset. Other costs connected with the leasing contract, such as lessor's margin, interest refinancing costs, overheads and insurance charges, shall not be eligible expenditure;
- (c) general costs linked to expenditure referred to in points (a) and (b) such as architects, engineers and consultations fees, feasibility studies, the acquisition of patent rights and licences.

In duly substantiated cases and by way of derogation from point (b) Member States may establish the conditions where the purchase of second-hand equipments may be regarded as eligible expenditure only for micro, small and medium-sized enterprises within the meaning of Commission recommendation 2003/361/EC.

### Investments in kind

For measures with investments in kind, contributions of a public or private beneficiary, namely the provision of goods or services for which no cash payment supported by invoices or equivalent documents is made, may be eligible expenditure provided that the following conditions are fulfilled:

- (a) the contributions consist in the provision of land or real estate, equipment or raw materials, research or professional work or unpaid voluntary work;
- (b) they are not made in respect of financial engineering actions referred to in Article 50;
- (c) their value can be independently assessed and verified.

In the case of provision of land or real estate, the value shall be certified by an independent qualified expert or duly authorised official body.

In the case of unpaid voluntary work, the value of that work shall be determined taking into account the time spent and the hourly and daily rate of remuneration for equivalent work, where relevant on the basis of ex-ante established system of standard costing, provided that the control system provides reasonable assurance that the work has been carried out.

## **BASIC SERVICES FOR THE ECONOMY AND RURAL POPULATION**

### **(in case of programming of broadband)**

#### **Title of the measure**

Basic services for the economy and rural population

#### **Legal basis**

Articles 52(b)(i) and 56 of Regulation (EC) No 1698/2005.

Point 5.3.3.2.1 of Annex II of Regulation (EC) No 1974/2006.

Annex III of Regulation (EC) No 1698/2005.

#### **Objective**

To accompany changes in rural areas by improving basic services, including local access to Information and Communication Technologies (ICTs) and carry out investments making rural areas more attractive in order to reverse trends towards economic and social decline and depopulation of the countryside.

#### **Type of support**

The support shall cover the types of operations listed in Annex III of Regulation (EC) No. 1698/2005.

- ❖ Creation of and enabling access to broadband infrastructure including backhaul facilities and ground equipment (e.g. fixed, terrestrial wireless, satellite-based or combination of technologies);
- ❖ Upgrade of existing broadband infrastructure;
- ❖ Laying down passive broadband infrastructure (e.g.: civil engineering works such as ducts, and other network elements such as dark fibre, etc.) also in synergy with other infrastructures (energy, transport, water, sewerage networks, etc.).

#### **State aid provisions**

State aid rules apply on Axis 3 measures (according to article 70(8) of Regulation 1698/2005 and article 56 of the implementing rules). Aid intensities and thresholds imposed by these state aid rules should be respected ("*de minimis*", Regulation 70/2001 or its replacing regulation, Communication 2009/C 16/01).

Public services provided by public bodies may not be subject to state aid rules.

### **Best practices in implementation**

- See the annexed list with case examples under state aid (Annex IV)
- See COM(2009) 103 and Staff Working Document SEC(2009) 254
- EU i2010 policy framework for the information Society:  
[http://ec.europa.eu/information\\_society/europe/i2010/index\\_en.htm](http://ec.europa.eu/information_society/europe/i2010/index_en.htm)
- European broadband portal (EBP): <http://www.broadband-europe.eu/>
- EBP Check List of Actions for Public Authorities:  
<http://www.broadband-europe.eu/Pages/checklist.aspx>
- EU epractice web portal:  
<http://www.ePractice.eu>

## MEASURE TEMPLATE

### **Name of the measure**

### **Article (and paragraph) which covers the measure**

### **Code of the measure (321)**

### **Rationale for intervention**

When explaining the rationale for intervention reference to the recovery package, economic recovery schemes and/or other policy documents and strategies such as relevant broadband policy frameworks<sup>2</sup> could be mentioned to show the synergy also with other ICT/broadband measures taken under other policy frameworks (regional, national, etc). Use the situation in rural areas (population density, existing access to infrastructure and services, citizens and business requirements, embedding of broadband action into area development plans, etc) as justification for the intervention.

### **Objectives of the measure**

*Examples of objectives linked to broadband:*

- Supply the rural economy and rural population with broadband
- Ensure access to internet for rural businesses and rural population
- Increase rural areas' attractiveness, business competitiveness and employment in rural areas by provision of access to high-speed internet
- Provide full broadband coverage in rural areas
- Support the socio-economic development of rural areas
- Improve (better) access to services for rural population and businesses

### **Scope**

Define the target area (investments can only take place in rural areas). Define the beneficiaries and other relevant conditions. In case of an approved State aid scheme, align with it.

### **Type of operations supported**

See the new Annex III as proposed by the Recovery package modifications. In case of support for technical equipment such as satellite dishes and modems, be more specific as regards the use of this equipment (by whom? e.g. households, public authorities, etc.; under what conditions?, etc.). Additional text could be included based on the description on the types of activities that could be supported under the 3 newly introduced broadband types of operations.

No limitation to small-scale infrastructure.

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<sup>2</sup> Reference to the national, regional or local Broadband policy frameworks within which the broadband measure fits into. See also Annex VI: Member States i2010 contact details on Broadband.

### **Type of cost covered**

See also the description on the types of activities that could be supported under the 3 newly introduced broadband types of operations in the new Annex III of Regulation (EC) No 1698/2005.

In case of advance payments, description of arrangements (rate of advance –up to 50% for 2009 and 2010 - guarantee covering advances, conditions for releasing the guarantee).

### **Demarcation line and criteria with other EU financial instruments**

Define clear demarcation lines with other Community funding (e.g. under SF). See Annex I for currently existing practices in RDPs as regards demarcation criteria for broadband.

### **Financing**

- Aid intensity rates
- Total cost
- Public expenditure and EAFRD contribution
- Use of any temporary or newly modified provisions related to EAFRD co-financing

### **Quantified targets for EU common indicators**

<b>Type of indicator</b>	<b>Indicator</b>	<b>Target 2007-2013</b>
Output	Number of supported actions	
	Total volume of investment	
Result	Population in rural areas benefiting from improved services	
	Increase in internet penetration in rural areas	
Impact	Net additional value expressed in PPS	
	Net additional full time equivalent jobs created	

### **Additional programme-specific indicators and quantified targets**

In case of insufficient data for provision of indicators, commitments for provision of these within certain period could be made.

Note: In the case of an approved State aid scheme for broadband or State aid under the temporary framework for state aid, make the correct linkages and align with it.

## DEMARICATION LINES WITH OTHER EU FINANCIAL INSTRUMENTS

### General background

The definition of the of demarcation lines between the various EU funding instruments is a responsibility of MS and regions. As regards broadband, these concern mostly the investments under the EAFRD and ERDF.

Good cooperation and share of information between the various Managing Authorities is an important pre-requisite for a successful and targeted approach as regards broadband, when the both funds intervene. The Commission is assisting MS and regions in their efforts for defining clear and workable demarcation lines. However, demarcation lines are not present in cases when only one of the instruments is used for supporting such investments.

In the cases where demarcation lines are not yet clearly developed or are ambiguously set, efforts should be focused on the creation of coordination bodies which should ensure the complementarity between the funds and avoidance of overlapping of spending and activities. Revised and better formulated demarcation lines in this case are expected to be provided with the planned modifications of the RDPs related to broadband and the Health-check of the CAP;

Overall, demarcation lines can be drawn based on several criteria, the most widely used of which are:

- Territorial/administrative coverage
- Size of a project
- Total public support (e.g. "*de minimis*")
- Other criteria
- No demarcation (in case of interventions of only one fund)

### Existing demarcation criteria in RDPs

At this moment, investments in broadband infrastructure are planned in about one third of all RDPs (31 RDPs in total) by 12 MS, with some modification requests pending at the time of this assessment. In all cases, and as required by the rural development policy setting, investments under this measure should happen in rural areas. The definition of rural areas and the target areas is a responsibility of MS and regions.

As regards the demarcation lines between EAFRD and ERDF set by Member States and regions on broadband infrastructure, the following could be observed:

- Demarcation based on the size of the project (e.g. EUR 300 000 set as a threshold level below which EAFRD intervenes, IT Sicily);
- Demarcation based on the availability of fixed telephone line in the area (EAFRD intervenes when there is no fixed line available, e.g. IT Toscana);
- Demarcation based on the typology of intervention and the type of territory (e.g. some Italian regions where different types of rural areas are identified; or Slovakia

where the territory is split in growth innovation poles and non-innovative poles, the latter being the target of the EAFRD interventions);

- Demarcation based on the size of the municipalities (e.g. in most of the German regions EAFRD intervenes in areas with defined maximum of the population, e.g. 10 000 inhabitants in the Nord-Rheine Westfalen region; in the Czech Republic demarcation is set at 500 inhabitants per municipality);
- Demarcation ensured at national/regional level due to the presence of only one body that coordinates the implementation of the SF and RD policies, respectively the management of the EAFRD and SFs (e.g. ES Balears);
- Demarcation based on the importance of the project (e.g. in Sweden, Denmark and ES Murcia the EAFRD support is limited to projects at local level);
- Demarcation based on type of beneficiary (e.g. in Italian regions EARDF supports ICT infrastructure for rural enterprises).
- Combination of the above.

Most of the demarcation lines are country- or region specific.

As regards the opportunities for further development and targeting of the Recovery funds on broadband, the following additional demarcation criteria could be used:

- Part of rural areas where the lack of broadband infrastructure is evident and/or is the strongest (in case of insufficient funds or unequal development of broadband within the country/region; e.g. list of municipalities where investments could be supported, rural areas in selected NUTS2/NUTS3 regions or within other administrative and territorial units within the rural development programme area, etc.);

## Annex II

### **FUNDING ON BROADBAND INFRASTRUCTURE UNDER THE ERDF**

Overall, of the total €344.4 billion Community funding under the three Objectives (namely Convergence, Regional competitiveness and employment, and European territorial cooperation), some 4.4% (€15.3 billion) will be used in the current programming period 2007–2013 for investments in the information society, of which about three quarters for products and service development, and the rest for infrastructure.

The Cohesion policy funds will continue to develop broadband infrastructure in rural areas though there is no specific budget separated for rural areas - it will be a different story in each MS. In the new programming period 2007–2013, about €2.3 billion from the Cohesion ICT budget will be invested in priorities directly linked to broadband infrastructure.

At present, certain MS and/or regions have opted, for example, to develop their broadband infrastructure entirely through the Structural Funds, while keeping EAFRD support vital for investments in products and services (Bulgaria, Lithuania, Belgium, Finland, some German regions, Greece, Portugal, several Italian, Spanish and UK regions, etc.). However, there is no specific ICT budget envelope under rural development for most of the programmes either.

In about one third of the MS (Austria, Bulgaria, Finland, Germany, Greece, Spain, Italy, Latvia, and Portugal) investments in infrastructure will represent up to 15% of the total commitments under the Information Society heading. In others, such as Belgium, Ireland and Slovenia, it will account for more than 44% of the total spending for ICT development. In addition to this, two ICT-related "fast-track" INTERREG IV C thematic regional networks have been launched in 2008.

Proposals under the theme "Better ICT connections between regions" are meant to reinforce the capacity of regional authorities to plan, manage and implement ICT strategies and projects that support EU policy objectives in the context of the digital divide, in particular in rural and remote areas and less developed regions.

Table 1 summarizes the budget envelopes for broadband infrastructure per MS under the ERDF budgets per operational programmes are also available and could be distributed under request.

**Table 1. Planned investment in telephone infrastructure & broadband networks under Cohesion Policy 2007-13**

<b>Member State</b>	<b>Planned investments (EUR)</b>
PL	984.164.069
EL	210.850.000
ES	164.211.238
IT	164.037.626
FR	107.871.407
RO	90.637.434
UK	85.467.720
SK	80.798.945
PT	72.381.920
SI	70.013.449
EU27	55.817.680
LT	43.215.638
SE	30.169.250
IE	20.000.000
LV	19.188.819
DE	19.150.000
BE	15.238.942
BG	13.610.835
DK	8.271.597
FI	1.620.022
AT	501.000
CY	0
CZ	0
EE	0
HU	0
LU	0
MT	0
NL	0
<b>TOTAL</b>	<b>2.257.217.591</b>

## Annex III

### **STATE AID PROVISIONS AND THE PROGRAMMING OF THE RECOVERY FUNDS FOR BROADBAND INFRASTRUCTURE**

At present, investments in broadband projects with the goal of reducing the digital divide are assessed directly under Article 87(3)(c) of the EC Treaty.

Granting of aid is a subject to several safeguards – depending on the potential distortive effect of the measure - to be endorsed under the State aid rules. Public interventions have to remedy a genuine and well-defined market failure (including the lack of equitable broadband coverage) in a necessary and proportionate way. Safeguards to be implemented in order to ensure that the measure is proportionate with its objectives and the distortion of competition is minimised usually include: open tenders to select the beneficiaries of the aid; technology neutrality; open wholesale access on the subsidized network; minimisation of price distortion; monitoring and clawback provision to avoid excessive compensation; limited duration of the scheme. Other specific safeguards may be applied on a case by case basis if necessary.

Importantly, the Commission has always insisted that an open, non-discriminatory wholesale access needs to be provided for third party operators on the subsidized networks, in order to alleviate the potential distortive effect on the measure and foster (service-based) competition on such areas.

MS and regions have the unique possibility, within the modification exercise linked to the Recovery Package, to define their own state aid schemes and use also the temporary provisions as regards state aid and size of public support, which were recently approved and which tackle the economic crisis. Such approach will allow investments of larger scale and with bigger territorial coverage that could be focused on large white spots (i.e. areas with no broadband infrastructure), clear and transparent tendering procedures and achievement of higher impacts. This is, however, not a prerequisite for having broadband support programmed under rural development. The cases described below provide the various options under which this could happen.

Other important elements are the currently approved State aid schemes under the Structural Funds. Rural development Managing Authorities should look at them and depending on their content could try to utilise them for their programming purposes, thus saving time and being efficient.

#### **Case 1: Only projects under the "*de-minimis*" rule (EUR 200,000 total public support)**

In cases when total public support for the types of operations specified under Annex III of Regulation (EC) No. 1698/2005 is programmed to be maximum EUR 200,000 ("*de minimis*") there is no need of development of a State aid scheme and state aid clearance.

This is the most common way of programming applied in rural development for now.

No state aid notifications are needed in this case.

**Case 2: Only projects under the "de minimis" rule (EUR 200,000 total public support) with additional support (up to EUR 500,000 in total) allowed under the Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis (2009/C 16/01)**

MS and regions can use the provisions under the Temporary Community framework for State aid measures and increase public support for projects to a maximum amount of EUR 500,000 per beneficiary (including support paid out under the "de minimis" rule) without state aid notification and approval.

For this to happen, there are several prerequisites:

1. MS should have notified the Commission (DG COMP) and should have obtained a state aid clearance under the Temporary Community framework for support up to EUR 500,000. The received state aid number should be included in the RDP.
2. The aid is granted no later than 31 december 2010;
3. The accumulation with the "de-minimis" aid has to refer to the period 2008-2010 (i.e. any "de-minimis" aid already received during 2008 and 2009 needs to be deducted from the EUR 500,000).

Individual aids under the Temporary Community framework should not be notified. Public support is per beneficiary (e.g. company) and could be in the form of a lump sum, given that all other legal requirements that apply are met (e.g. specific rules in the RDPs). Support cannot be provided to companies in difficulties (as of 1 July 2008) and monitoring requirements should also apply to these projects.

In case that there is no approved state aid scheme for amounts up to EUR 500,000 under the Temporary Community framework for a given MS, this MS or its regions cannot benefit from this provisions.

*Information about the Temporary Framework (including the list countries with an approved scheme + case numbers)*

- All documents: [http://ec.europa.eu/competition/state\\_aid/legislation/horizontal.html](http://ec.europa.eu/competition/state_aid/legislation/horizontal.html)
- Legislation: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:083:0001:0015:EN:PDF>
- FAQ: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/795&format=HTML&aged=0&language=EN&guiLanguage=en>
- List of countries with an approved scheme: [http://ec.europa.eu/competition/state\\_aid/overview/tackling\\_economic\\_crisis.html](http://ec.europa.eu/competition/state_aid/overview/tackling_economic_crisis.html)

### Case 3: State aid scheme for broadband infrastructure

MS or regions can opt for developing projects of large scale for which public support can go beyond the "*de-minimis*" amount of EUR 200,000 or the total EUR 500,000 allowed under the Temporary Community framework (if granted to the respective MS).

In this case, MS or regions must opt for state aid schemes, which have to be approved by the Commission (DG COMP). New broadband guidelines have been prepared and public consultation has been launched. These can be used by MS or regions to develop their state aid schemes, especially as regards development of traditional broadband investments for which an established state aid practice exists.

The major conditions required for a submission of a traditional broadband State aid scheme are:

1. Detailed *mapping and coverage analysis – market analysis* to clearly identify which geographic areas will be covered by the support measure in question;
2. *Open tender process* selecting the *best economic offer* to limit aid, to respect equal treatment of candidates and to leave the market to come up with the best solution;
3. *Technological neutrality* not to favour any technology or service provider;
4. *Use of existing infrastructure* to avoid unnecessary and wasteful duplication of resources;
5. *Wholesale access* to enhance competition and provide more choice for end-users;
6. *Benchmarking pricing* to avoid excessive/ predatory pricing;
7. *Claw-back mechanism* to avoid over-compensation to minimise the amount of aid ex post;

*Documentation and information on State aid to broadband:*

- Summary: [http://ec.europa.eu/competition/sectors/telecommunications/overview\\_en.html](http://ec.europa.eu/competition/sectors/telecommunications/overview_en.html)
- List of State aid broadband decisions:  
[http://ec.europa.eu/competition/sectors/telecommunications/broadband\\_decisions.pdf](http://ec.europa.eu/competition/sectors/telecommunications/broadband_decisions.pdf)

Please note that the State aid Guidelines on broadband are already available for download and are in public consultation phase:

- Broadband Guidelines - public consultation page (**ongoing**):  
[http://ec.europa.eu/competition/consultations/2009\\_broadband\\_guidelines/index.html](http://ec.europa.eu/competition/consultations/2009_broadband_guidelines/index.html)
- Text:  
[http://ec.europa.eu/competition/consultations/2009\\_broadband\\_guidelines/guidelines\\_en.pdf](http://ec.europa.eu/competition/consultations/2009_broadband_guidelines/guidelines_en.pdf)

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Within Case 3 there are two options for proceeding:

- Simplified procedure (as of 29 April 2009)
- Normal procedure, which could last up to 6 months

### **Simplified procedure (Art 87(3)(c))**

The simplified procedure is applicable for cases with sufficient number of precedents, i.e.:

- Funding of broadband networks in “white areas” (e.g. in rural and remote areas, where no affordable broadband services are available);
- Provided that conditions laid down in the Broadband Guidelines are incorporated.

The duration of the procedure is **20 working days**. In order the procedure to be used:

1. MS should contact the Commission (DG COMP/DG AGRI/DG REGIO) before notifying the project;
2. If all the conditions are met and the simplified procedure applies, MS can notify with the usual form;
3. The summary of notifications will be published on the Commission's website before the adoption of the final decision in order to allow stakeholders to provide their comments
4. The Commission issue a short form decision within 20 working days after the notification.

*Information about the Simplification Package regarding State aid Proceedings ("Simplified procedure")*

- All documents: [http://ec.europa.eu/competition/state\\_aid/legislation/rules.html](http://ec.europa.eu/competition/state_aid/legislation/rules.html)
- Legislation: [http://ec.europa.eu/competition/state\\_aid/legislation/notice\\_simplified\\_procedure\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/notice_simplified_procedure_en.pdf)
- FAQ: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/208&format=HTML&aged=0&language=EN&guiLanguage=en>

## Annex IV

### AID INTENSITY RATES FOR BROADBAND INFRASTRUCTURE PROJECTS

There is no specific aid intensity ceiling, which applies to broadband projects. Aid intensity depends on the specific need of each project, while proportionality is ensured by the safeguards described above. This means that it is possible to grant aid intensities higher than, for example, the regional aid intensity rates if the specificity of the case requires it<sup>3</sup>.

#### **Case 1: Only projects under the "*de-minimis*" rule (EUR 200,000 total public support)**

In this case, MS or regions may opt for an aid intensity rate up to 100% of the eligible costs. This applies especially in cases where infrastructure is developed by public authorities.

#### **Case 2: Only projects under the "*de minimis*" rule (EUR 200,000 total public support) with additional support (up to EUR 500,000 in total) allowed under the Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis (2009/C 16/01)**

In this case, MS or regions may opt for an aid intensity rate up to 100% of the eligible costs, given that all other conditions in Annex II on the same case (Case 2) are met.

#### **Case 3: State aid scheme for broadband infrastructure**

In this case, the aid intensity rate specified in the approved State aid scheme applies.

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<sup>3</sup> See for example Commission decision in case of N14/2008 on the extension of broadband coverage in Scotland (for ultra-remote areas) where the authorities faced serious difficulties to provide affordable broadband coverage to the last 1% of the Scottish populations (islands, forests, no fixed lines, etc). For a complete list of decisions adopted, please see the broadband section at: [http://ec.europa.eu/competition/sectors/telecommunications/overview\\_en.html](http://ec.europa.eu/competition/sectors/telecommunications/overview_en.html).

## Annex V

### A NON-EXHAUSTIVE LIST OF EXAMPLES OF BROADBAND INVESTMENT IN RURAL AREAS

(Selected from the projects reviewed under state aid)

[http://ec.europa.eu/competition/sectors/telecommunications/broadband\\_decisions.pdf](http://ec.europa.eu/competition/sectors/telecommunications/broadband_decisions.pdf)

- N 282 / 2003 - Cumbria Broadband-Project ACCESS
- N 213 / 2003 - ATLAS : Broadband infrastructure scheme for business park
- N 263 / 2005 - Broadband for Kaernten
- N 284 / 2005 - Metropolitan Area Network Broadband Program, Ireland
- N 264 / 2006 - Broadband for rural Tuscany
- N 157 / 2006 - South Yorkshire Digital Region Broadband Project
- N 746 / 2006 - North Yorkshire NYNET Project
- N 46 / 2007 - Welsh Public Sector Network Scheme - UK
- NN 24 / 2007 - Prague Municipal Wireless Network
- N 475/2007 - IRL - National Broadband Scheme Ireland
- N 473 / 2007 - IT - Broadband connections for Alto Adige
- N 442/2007 – IT - Aid in favour of broadband in remote areas of Veneto
- N 412/2007 – IT - Aid to reduce digital divide in Piedmont
- N 14/2008 - UK - Broadband in Scotland - Extending broadband reach
- N 73/2008 - ES - Public support to broadband, digital TV, mobile and infrastructures in rural areas
- N 250/2008 - IT - Broadband connections for Alto Adige II
- N 115/2008 - GER - Broadband in rural areas of Germany
- N 508/2008 - UK - Provision of Remote Broadband Services in Northern Ireland
- N 238/2008 - DE - Broadband infrastructure development

Additional examples of good practice concerning alternative approaches to public intervention and business models can be found in the **European Broadband Portal (EBP)**: [www.broadband-europe.eu](http://www.broadband-europe.eu). The EBP also plays a role in enabling the **publication of calls for tender** and in **facilitating demand aggregation** and **joint procurement** at interregional and international level (e.g., for satellite).

## Annex VI

### MEMBER STATES i2010 CONTACT DETAILS ON BROADBAND

Update: 25/05/2009

Rural Development Authorities are encouraged to liaise with the relevant regional and/or national authorities in charge of the overall broadband policy for the area in question. Below are listed available contact details which RD authorities could approach to create a synergy between their broadband actions and those planned by national or regional authorities.

AUSTRIA	Alfred Ruzicka	<a href="mailto:alfred.ruzicka@bmvit.gv.at">alfred.ruzicka@bmvit.gv.at</a>	+43 1 7116265 4700	1030 Wien/ Ghegastraße 1	Bundesministerium für Verkehr, Innovation und Technologie
CYPRUS	Ms Kyriaki Pantziarou-Therapontos	<a href="mailto:kpantziarou@mcw.gov.cy">kpantziarou@mcw.gov.cy</a>	+357 22 814033		Ministry of Communications and Works
DENMARK	Peter Ostenfeld	<a href="mailto:pmo@itst.dk">pmo@itst.dk</a>	+ 45 3545 0133	Holsteinsgade 63, DK-2100 København Ø	Danish Ministry for Science Technology and Innovation
ESTONIA	Aivo Lepp	<a href="mailto:aivo.lepp@mkm.ee">aivo.lepp@mkm.ee</a>	00 3726397661		Estonian Ministry of Economic Affairs and Communications
ICELAND	Ottó V. Winther	<a href="mailto:otto.winther@sam.stjr.is">otto.winther@sam.stjr.is</a>	+ 354 562 1702	Hafnarhúsinu v/Tryggvagötu, 150 Reykjavík, Ísland/ Iceland	Ministry of Transport, Communications and Municipal Affairs
IRELAND	Derek Byrne	<a href="mailto:derek.byrne@dcentr.gov.ie">derek.byrne@dcentr.gov.ie</a>	00 35316782126	29-31 Adelaide Road, Dublin 2, Ireland	Department Of Communications, Energy and Natural Resources
ITALY	Rossella Lehnus	<a href="mailto:rossella.lehnus@sviluppo.economico.gov.it">rossella.lehnus@sviluppo.economico.gov.it</a>	+ 39 06 5444 2300 - 3	Viale America 201, 00142 Rome- Italy	Dipartimento per le Comunicazioni
MALTA	Ms Celia Falzon	<a href="mailto:celia.falzon@mca.org.mt">celia.falzon@mca.org.mt</a>	+356 2133 6840	Valletta Waterfront, Pinto Wharf, Valletta FRN1913, Malta	Malta Communications Authority
PORTUGAL	Luis T. Magalhães	<a href="mailto:luis.magalhaes@umic.pt">luis.magalhaes@umic.pt</a>	+351 211 119 609	Tagus Park, Edifício Inovação I, Sala 124, 2740-122 Porto Salvo	Knowledge Society Agency (UMIC)
SLOVAKIA	Marek Čanecký, MSc.	<a href="mailto:marek.canecky@vlada.gov.sk">marek.canecky@vlada.gov.sk</a>	+421 57295 552	Námestie slobody 1, 813 70 Bratislava	Government Office of the Slovak Republic

Note: Missing contact details for the remaining Member States will be provided when received from i2010 MS Committee.

## Annex VII

### **REGIONAL DEVELOPMENT MANAGING AUTHORITIES CONTACT DETAILS**

Broadband projects supported in the context of the European Economic Recovery Plan (EERP) should be **additional and complementary** to investments already planned in these areas under Cohesion Policy and/or the Rural Development Policy.

To ensure that synergies are exploited and for more information on broadband infrastructure projects under the ERDF, Managing Authorities for Rural Development are encouraged to contact their regional development counterparts. Contact details for the Regional Development Managing Authorities are available at:

[http://ec.europa.eu/regional\\_policy/manage/authority/authority\\_en.cfm](http://ec.europa.eu/regional_policy/manage/authority/authority_en.cfm)