

## RECOVERY AND RESILIENCE FACILITY – STATE AID

### Guiding template: Digitalisation of news media

#### *Link to European Flagship: Scale Up*

*Disclaimer: this is a working document drafted by the services of the European Commission for information purposes and it does not express an official position of the Commission on this issue, nor does it anticipate such a position. It is not intended to constitute a statement of the law and is without prejudice to the interpretation of the Treaty provisions on State aid by the Union Courts. In any case, the services of the Directorate General for Competition (DG Competition) are available to provide further guidance to Member States on the issues below in the context of the preparation of their respective Recovery and Resilience Plans.*

### **I. Objective of the 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 objectives 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:

---

<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 excluded, and therefore prior notification to the Commission is not necessary.
- ii. State aid would be involved but no notification is necessary, and specific rules may apply (in case of aid exempted from the notification obligation); and
- iii. State aid would be involved and a notification is necessary, with reference to the main applicable State aid rules.

## **II. Description of the investment**

7. Supporting the digital transformation of news media is of essence in order to develop the viability of the sector. In this respect, the Commission's Annual Sustainable Growth Strategy 2021 states that particular attention should be paid to supporting sectors which play a key role for our democracies, especially the media sector, where support should be provided in a way that respects and promotes media freedom and pluralism.<sup>3</sup>
8. Independent and diverse professional journalistic reporting at national, regional and local levels is a prerequisite for democracies, inclusive societies and well-functioning economies.<sup>45</sup> There is a strong trend of falling subscriptions and one-off sales of printed news media and recent drops in advertising revenue. This has increased the already high unit cost of printed products, which publishers often cannot offset by increased prices. This raises the issue of changes in well-established business models, but due to the high costs of producing and distributing traditional forms of content, publishers often lack financial resources for digital transformation and innovation. More generally, in the news media sector, traditional media have struggled to adapt to an online market in which the majority of advertising revenues go to global online platforms.
9. In this situation, projects focused on developing editorial content for electronic publishing, or on developing new solutions for electronic publishing and for attracting attention to and consumption of electronically published content, or projects concerning innovative business models for digital publishing, can receive aid in order to support the long-term development of online media and electronic publishing.<sup>6</sup>
10. In line with the overall purpose of the guiding templates, the present one focuses on an area where there is previous State aid case practice in order to provide reliable guidance

---

<sup>3</sup> Under the Recovery and Resilience Facility, each National Recovery and Resilience Plan will earmark a minimum level of 20% of expenditure for digital. Measures to boost the production and distribution of digital content, such as digital media, count towards this target.

<sup>4</sup> Media freedom and media pluralism are also enshrined in the EU Charter of Fundamental Rights.

<sup>5</sup> As set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions On the European democracy action plan, 3.12.2020, COM(2020) final, and in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation, 3.12.2020, COM(2020) 784 final.

<sup>6</sup> A temporary aid measure dedicated to digital transition of printed media can be found in case SA.43271 (2015/N) – Sweden – Development aid for written news media, OJ C/129/2016, replaced by a measure included in case SA.49405 (2018/N) – Sweden – Sweden Media Aid, OJ C/424/2018. A general measure which contains a temporary measure dedicated to digital transition of printed media is case SA.36366 (2013/N) – Denmark – Production and innovation aid to written media, OJ C/371/2013, prolonged by decision in case SA.55996 (2020/N) – Denmark – Prolongation of aid to production and innovation aid to written media, OJ C/62/2020.

(i.e. news media publishing). State aid may be granted for other media where the general conditions for compatible State aid are met. In addition to the general legal basis for State aid to media, Article 107(3)(c) TFEU, and depending on the circumstances, State aid may also be granted under other sets of rules, such as the rules on Services of General Economic Interest (“SGEI”) based on Article 106(2) TFEU, as set out below.

11. This guiding template thus concerns exclusively investments linked to the digitalisation of professional news media production, publishing and distribution, facilitating a transition from offline to digital business models, and/or developments of their digital offer (referred throughout this document to as ‘digitalisation of news media’). In line with the Commission’s case practice, measures to digitise news media which amount to aid must meet strict criteria for aid approval, including the necessity and proportionality of envisaged investments (see Section V below, under ‘Assessment criteria’).
12. This guiding template does not apply to cinema and entertainment media. State aid for public service media is assessed under Article 106(2) TFEU and rules set out in the Communication on State aid for public service broadcasting<sup>7</sup>. State aid to film creation is assessed under the Communication on State aid for films and other audio-visual works<sup>8</sup>.

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

13. 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*

14. Support for activities which are not of an economic nature, i.e. are not used for offering goods or services on the market, are not considered State aid.
15. However, given the sector under consideration (i.e. news media), it appears unlikely that the investments covered by this guiding template could be deemed to concern non-economic activities.

#### *B. No State resources*

16. Measures that do not involve the transfer of public resources<sup>9</sup> exclude the existence of State aid.<sup>10</sup>

---

<sup>7</sup> Communication from the Commission on the application of State aid rules to public service broadcasting, OJ C 257, 27.10.2009, p. 1.

<sup>8</sup> Communication from the Commission on State aid for films and other audiovisual works, OJ C 332, 15.11.2013, p. 1.

<sup>9</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 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”), section 3.

<sup>10</sup> Note that funds under the Facility constitute State resources for the purposes of Article 107(1) TFEU.

17. Whenever the digitalisation of news media takes place at the own initiative of the media outlet without State intervention or public funds, the presence of State resources and of State aid is excluded. However, the investment considered in this guiding template will normally entail the transfer of public resources, be it directly (e.g. grants) or indirectly (e.g. tax exemption).

*C. No selectivity*

18. Measures that are of general application and do not favour certain undertakings, or the production of certain goods, are not selective and do not constitute State aid. It is unlikely that a measure aimed at digitalisation of media would be non-selective.

*D. No advantage*

19. Measures that do not entail an economic advantage exclude the existence of State aid. If a public authority invests into digitalisation initiatives on terms comparable to those that a private investor operating under normal market conditions would apply, in line with the Market Economy Operator (MEO) principle, then State aid would not be involved.<sup>11</sup>

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

20. Where an aid measure strengthens the competitive position of the benefitting undertakings compared to that of actual or potential competitors that are not eligible for the aid, it is considered to have potentially distorting effects on competition.<sup>12</sup>

*a. De minimis aid*

21. The distortion of competition and effect on trade can be excluded in cases of very limited amounts of aid (“*de minimis* aid”). *De minimis* aid is not considered State aid. Therefore, there is no need for prior approval from the Commission and Member States do not even have to inform the Commission of such aid.
22. 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>13</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.

---

<sup>11</sup> For more details, see section 4.2 of the Notice on the notion of State aid. Only the benefits and obligations linked to the role of the State as an economic operator, to the exclusion of those linked to its role as a public authority, can be taken into account. The State's behaviour, while being rational from a public policy perspective, may at the same time include considerations which a market economy operator would normally not consider.

<sup>12</sup> See the Notice on the notion of State aid, paragraph 187.

<sup>13</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. 1.

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

23. With regard to the criterion of effect on trade between Member States, public support to undertakings only constitutes State aid under Article 107(1) TFEU insofar as it “affects trade between Member States”. A relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected.<sup>14</sup> Public support can also be liable to have an effect on trade between Member States even if the recipient is not directly involved in cross-border trade.<sup>15</sup>
24. There may, however, be instances of support measures which have a purely local impact and consequently have no effect on trade between Member States.
25. The Commission has in several cases<sup>16</sup> considered that certain activities, due to specific circumstances, have a purely local impact and consequently no effect on trade if the following criteria are met. First, the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States. Second, it cannot be foreseen, with a sufficient degree of probability, that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment. This is for instance the case where it is established that the products provided cater only to a local market or in case of a language confined to a rather limited linguistic and geographical area. Furthermore, if the amounts attributed are beyond *de minimis* but still very modest, granted to small beneficiaries (for instance micro-enterprises) with only local or regional reach, a measure can be considered to have a purely local or regional impact.
26. The Commission further considers that public support is not liable to affect trade between Member States where it concerns events and entities which are unlikely to attract users or visitors away from similar offers in other Member States.<sup>17</sup> Publications which, for linguistic and geographical reasons, have a locally restricted audience are not liable to affect trade between Member States.<sup>18</sup>

---

<sup>14</sup> Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 68.

<sup>15</sup> Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 67; Judgement of the Court of Justice of 8 May 2013, *Libert and others*, Joined Cases –C-197/11 and C-203/11, ECLI: EU:C:2013:288, paragraph 78; Judgement of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, ECLI: EU:C:2003:415, paragraph 78.

<sup>16</sup> See for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 034, 06.2.2004, p. 63; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de Madeira*, OJ C 131, 28.5.2005, p. 12; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.3.2013, p. 1; N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

<sup>17</sup> See, for instance, the Commission decisions in State aid cases N 630/2003 *Local Museums Sardinia*, OJ C 275, 8.11.2005, p. 3; SA.34466 *Cyprus — Center for Visual Arts and Research*, OJ C 1, 4.1.2013, p. 10; SA.36581 *Greece – Construction of Archaeological Museum, Messara, Crete*; OJ C 353, 3.12.2013, p. 4; SA.35909 (2012/N) – *Czech Republic - Infrastructure for tourism (NUTS II region Southeast)*, OJ C 306, 22.10.2013, p. 4; SA.34891 (2012/N) - *Poland - State support to Związek Gmin Fortecznych Twierdzy Przemyśl*, OJ C 293, 9.10.2013, p. 1.

<sup>18</sup> See, for instance, Commission Decisions in State aid cases N 257/2007 *Subsidies for theatre productions in the Basque country*, OJ C 173, 26.7.2007, p. 1; N 458/2004 *Editorial Andaluza Holding*; SA.33243 *Jornal da Madeira*, OJ C 16, 19.1.2013, p. 1, SA.45512 (2016/N) *Spain - Aid to support the Valencian language in the press*, OJ C 369, 7.10.2016, and SA.44942 *Spain - Aid to local media published in the Basque language*, OJ C 369, 7.10.2016.

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

27. If a given investment meets the cumulative conditions of Article 107(1) TFEU and thus entails State aid, it may be considered compatible with the internal market and can be granted without notification in the following instances:

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

28. 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 each individual measure granted under 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.
29. 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>19</sup>.
30. 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 (see in particular Article 14.1a)<sup>20</sup>.

##### *B. General Block Exemption Regulation (GBER)<sup>21</sup>*

31. 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 measures. They only have to inform the Commission thereof.
32. Some measures may fall under the rules for horizontal aid to SMEs, which under Article 4 GBER exempt from notification aid of EUR 7.5 million per undertaking per investment project, of investment aid to SMEs, and EUR 7.5 million per undertaking, per project of aid for process and organisational innovation for SMEs. The specific eligibility conditions for such aid are set out in Articles 17 and 29 GBER.
33. Article 17 GBER on investment aid to SMEs defines the eligible costs under this Article, and sets out the conditions related to investments in tangible as well as intangible assets, conditions related to employment directly created by an investment project, and indicates that the aid intensity shall not exceed: (a) 20 % of the eligible costs in the case of small enterprises; and (b) 10 % of the eligible costs in the case of medium-sized enterprises.
34. Article 29 GBER on aid for process and organisational innovation defines the eligible costs under this Article, and underlines that aid to large undertakings shall be

---

<sup>19</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>20</sup> As currently proposed in the Council Presidency compromise proposal of 7 October 2020.

<sup>21</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.

compatible only if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs. The aid intensity shall not exceed 15 % of the eligible costs for large undertakings and 50 % of the eligible costs for SMEs.

*C. Service of general economic interest: SGEI Decision<sup>22</sup>*

35. News agencies may be funded under the SGEI rules. The Commission has acknowledged the SGEI quality of news agency services, because of their central role for independent and broad news coverage.<sup>23</sup> Annual aid amounts of up to EUR 15 million may fall under the SGEI Decision and be exempted from the notification requirement, if the other relevant conditions of the SGEI Decision are met, like for example a clearly defined public service mandate, a description of the compensation mechanism, and ensuring the absence of over-compensation. The SGEI Decision could therefore be used as a compatibility basis to grant aid without need for notification for instance to local TV and radio broadcasters producing news.

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

36. 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*

37. 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.
38. 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.
39. The Commission aims to complete the assessment of notified State aid measures within six weeks of receiving complete notification from Member States.

*B. Relevant legal basis for compatibility*

40. Once it has been established that the investment entails State aid, it is necessary to assess whether the aid is compatible with the internal market.

---

<sup>22</sup> 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, 11.1.2012, p. 3.

<sup>23</sup> Case SA.35474 (2015/E) – Spain – *State aid to the Spanish news agency EFE*, OJ C/4/2017, and case SA.30481 (2012/E) – France – *State Aid in favour of Agence France-Presse (AFP)*, OJ C/020/2018.

41. 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.
42. To assess whether State aid 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).
43. In case the Commission has issued guidelines which apply to the aid in question, those rules will provide guidance on how the compatibility assessment is to be carried out and under what conditions. However, there are no specific guidelines that would apply directly to State aid for the digitalisation of news media.
44. In its compatibility assessment, the Commission will check whether the conditions of Article 107(3)(c) TFEU 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.

### **Assessment criteria**

45. A well-functioning free media landscape, media pluralism and editorial independence are a *sine qua non* for functioning democracies as well as Member States' economies, by ensuring a sound development of news media activities.
46. The news media markets have faced new challenges due to the digital transformation and the rise of global platforms, among others disinformation, the increasing production of user-generated content and algorithmically-controlled content selections, which can have a significant impact on the free flow of information and citizens' ability to access qualitative and diverse sources of information. Other challenges include the difficulties faced by traditional media companies to monetise their content online.
47. Media in general, and news media in particular, play an important role in social cohesion in the digital age. They ensure wider coverage of the population especially in rural areas, and can serve population groups that have difficulties embracing

digitalisation, for instance because of age. Promoting digital transformation does not mean a move away from their traditional production, but giving publishers and other offline news media outlets, which employ professional journalists, a way to diversify by investing in future-oriented services, thereby strengthening their commercial competitiveness.

48. In certain cases it can be considered that the sector may only develop if support is given in order to promote its level of activity, for instance in small media markets, such as small language areas, where the production and dissemination of news content could be at risk of ceasing to exist without support.
49. In order not to undermine the positive effects of the measure for the development of offline news media, the measure should provide for fair, objective, pre-determined and transparent selection criteria, which would not allow or justify direct or indirect State interference with editorial independence or arbitrary selection of beneficiaries by the government.
50. An aid measure for digital transformation of news media would typically be of transitional character, aimed at facilitating a transition from offline to digital. The eligibility criteria of the measure would ensure that beneficiaries focus on news coverage, current affairs and political debate, targeting the general public, and have a significant share (50% or more) of editorial content. Also requirements related to editorial independence or to the language of publication and national distribution area may be part of the eligibility criteria, as well as support to minority languages.
51. The Member State should show why the aid is **(i) necessary** in order to achieve its objective. Aid which is limited in time and targeted at remedying the increased risk of market failure in terms of reduced editorial content, and potentially in the long term reduced quality, which aims to (a) support innovative projects intended to facilitate the transition of news media into digital and electronic delivery formats with a view to strengthening the resilience of traditional news media, by developing their activities, (b) preserve and promote the diversity and pluralism of the news media sector regardless of technological platform, by mitigating the risks that the current major transition of the media sector pose to the existence of professional journalism, and (c) support to the long-term development of news media may be considered necessary.
52. Aid may be necessary in circumstances where incentives for a private media undertaking to produce independent editorial content available to all citizens on equal terms are limited. Aid may further be necessary where, from a public interest perspective, the market, without State support, is unable to deliver the desired output which is deemed necessary in order to ensure media pluralism to an extent necessary for the development of democratic policy and the economies of the Member States as well as of the EU.
53. The Member State should show that the aid is **(ii) proportionate** in the sense that no overcompensation occurs and only the means necessary to achieve the targeted investment for digitalisation of news media are granted; aid which contributes to ensuring that media content of quality is produced for the public and is targeted at those news media where a large part of journalistic competence is found, and aims at remedying a specific market failure by promoting innovation in the area of digital news content, can be considered proportionate where limited aid intensities do not exceed the minimum necessary to achieve the targeted investment for the digitalisation of news media.

54. The Member State should show that the aid has an **(iii) incentive effect**, i.e. that the aided activities would not have been carried out, or to a lesser extent, without the aid. In particular, where the eligibility criteria, notably those on editorial content and editorial resources, are intended to be an incentive to beneficiaries to carry out activities that they would otherwise not carry out, or to a lesser extent, without the aid.
55. The Member State should show that the aid is **(iv) appropriate** in that the eligibility and selection criteria and aid intensities ensure that the aid serves the overall purpose of the measure well.<sup>24</sup> Where the eligibility and selection criteria combined with the aid intensities ensure that aid is attributed to projects and beneficiaries which serve the overall purpose of the aid well, and provide aid beneficiaries a clear incentive to achieve a successful outcome of projects, aid can be considered appropriate.
56. The Member State should elaborate on the effect of the aid on trading conditions between Member States. Issues likely to be relevant in this context are to what extent the measure is not directed to a specific sector of the economy or geographic area, but addresses the general news media market broadly, the generally limited likelihood of cross-border trade of news media products and substitutability with foreign news media.
57. The Commission will conclude its compatibility assessment by balancing the positive effects of the aid on the development of the activity in question (production and dissemination of news) and the effect of the aid on trading conditions in the internal market. Where the positive effects outweigh the negative effects, the aid is considered compatible with Article 107(3)(c) TFEU.
58. Previous Commission decisions on aid to news media, and the press in particular, can constitute useful guidance in this respect<sup>25</sup>. The positive effects being more specific to the individual case, the Member State should design the scheme carefully defining concepts, in particular beneficiaries, eligibility criteria and objective(s) and carefully explaining how the aid is expected to promote the objective(s) of the measure.

## 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.

<sup>24</sup> The decision in case SA.36366 – Denmark – Production and innovation aid to written media, OJ C 371, 18.12.2013, was appealed by an advertising paper which contained less than the required quantity of editorial content necessary for eligibility under the measure (50%). The applicant argued that this requirement made the measure inadequate for the fulfilment of the overall objective of the measure to support media pluralism and the dissemination of socio-political news to the citizens in Denmark. The appeal was dismissed, see Judgment of the General Court of 11 October 2016 — *Søndagsavisen v Commission*, T-167/14, ECLI:EU:T:2016:603.

<sup>25</sup> See case SA.36366 (2013/N) – Denmark – Production and innovation aid to written media, OJ C/371/2013, case SA.42308 (2015/N) – Sweden – Amendments to the Swedish Press Aid Scheme, OJ C/104/2016, case SA.57781 (2020/N) – Sweden – Modifications of the Press and Media Aid schemes, OJ C/245/2020, case SA.49405 (2018/N) – Sweden – Sweden Media Aid, OJ C/424/2018, and case SA.43271 (2015/N) – Sweden – Development aid for written news media, OJ C/129/2016.

- 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.
- 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.
- 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, 11.1.2012, p. 3.