

The background of the slide features a faded image of a modern, curved building on the left. Overlaid on this is the flag of the European Economic Area (EEA), which consists of the European Union flag (a circle of twelve gold stars on a blue field) and the national flags of the three EFTA member states: Norway, Iceland, and Liechtenstein, arranged vertically.

Main principles of the EEA broadband state aid rules

Emily O'Reilly

21 May 2014

EFTA SURVEILLANCE
AUTHORITY

Please note that any views or opinions expressed in this presentation are strictly personal and do not necessarily reflect the official position of the EFTA Surveillance Authority

The EFTA Surveillance Authority (ESA)

- Established in 1994
- Located in Brussels
- Approx. 70 employees
- Safeguards the EEA Agreement



Fields of work

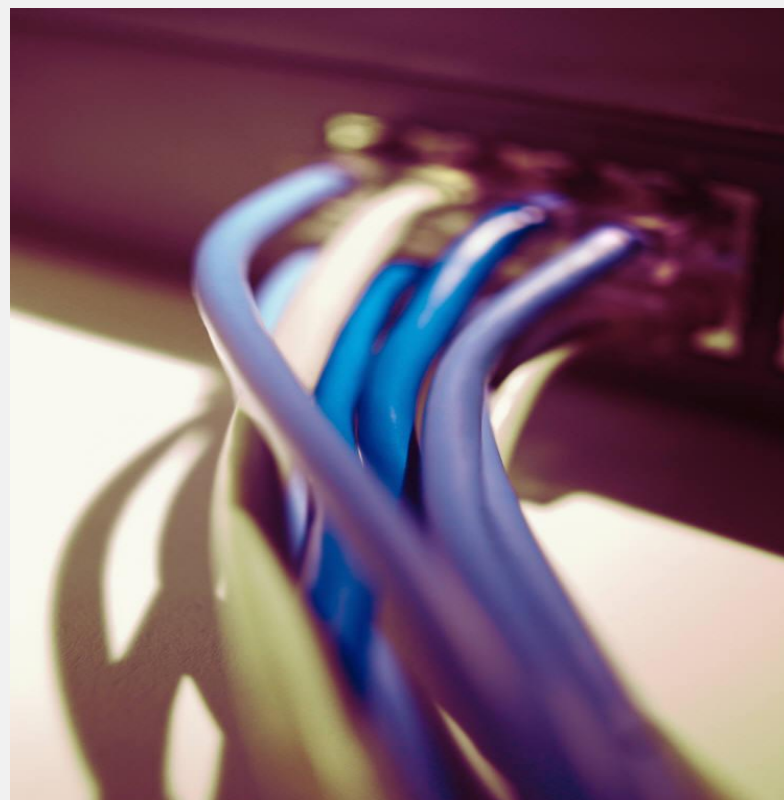
EEA Agreement:

- Internal Market
- Competition
- State Aid



Overview of presentation

- Role of EEA state aid rules for broadband
- Assessment framework
 - *Does the project involve state aid?*
 - *If state aid is involved, what then?*
- Useful sources of information





Role of EEA state aid rules for broadband

Key objectives

- Target real market failures
- Complement but not crowd out private investment
- Ensure competition and replicate market conditions through ensuring effective wholesale access
- Avoid picking winning operators or technologies
- Facilitate roll-out of broadband networks
- Promote efficient and effective public spending





Assessment framework for identifying existence and compatibility of state aid to broadband projects



Assessment framework – key questions

Does the project involve state aid?

- Commercial or non-commercial purpose?
- MEIP?
- SGEI?
- *De minimis*?

If so, is it compatible with the EEA Agreement?

- Existing framework scheme?
- Regional aid?
- SGEI?
- Block-exempted aid?
- Broadband guidelines?



Does the project involve state aid?

State
resources

Economic
advantage to
undertakings

Selective

Potential to
distort
competition
and affect
trade

Does the project involve state aid?

➤ *Possible exceptions:*

- Roll-out of a broadband network for *non-commercial purposes*, e.g. where such access not commercially provided to 3rd parties
- *De minimis aid* ≤ EUR 200 000 per beneficiary over 3-year period
- *Market Economy Investor Principle* (“MEIP”) – is investment undertaken on normal market terms? (*Amsterdam – Case C 53/2006*)
- *Service of General Economic Interest* (“SGEI”) – see section 2.3 of *Broadband Guidelines*

If the measure is state aid, what then?

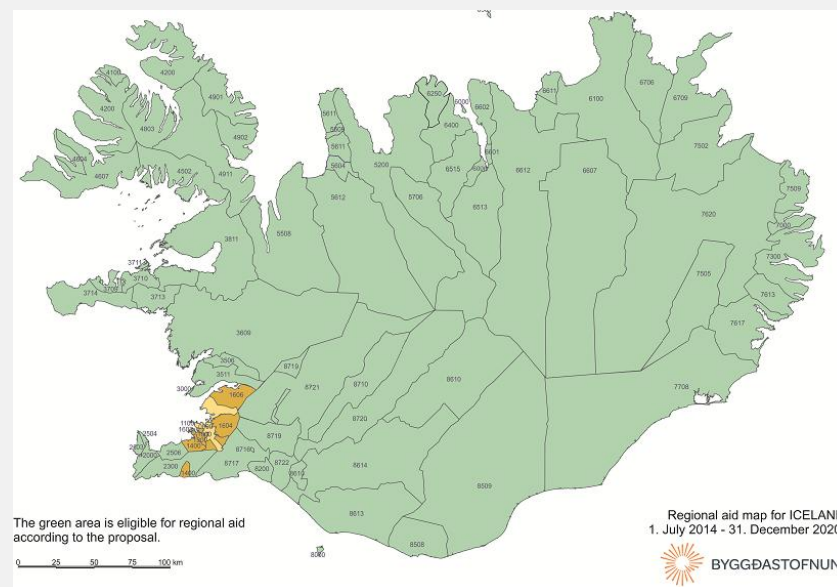
➤ ***Self-assessment or notification processes:***

- Existing (national or regional) framework scheme –
e.g. BDUK umbrella scheme
- Regional aid guidelines in case of “less advantaged areas” - see
next slides for criteria
- General block exemption regulation (GBER) – *see next slides for criteria*
- SGEI definition (again)
- Broadband Guidelines – *see next slides for criteria*



Regional aid guidelines

- Concerns aid for “assisted areas”. Responsible authority must show conditions are fulfilled including *inter alia*:
 - Aid is granted only to “white” areas
 - Active and passive wholesale access under fair and non-discriminatory conditions with possibility of full and effective unbundling
 - Competitive selection process in line with Broadband Guidelines

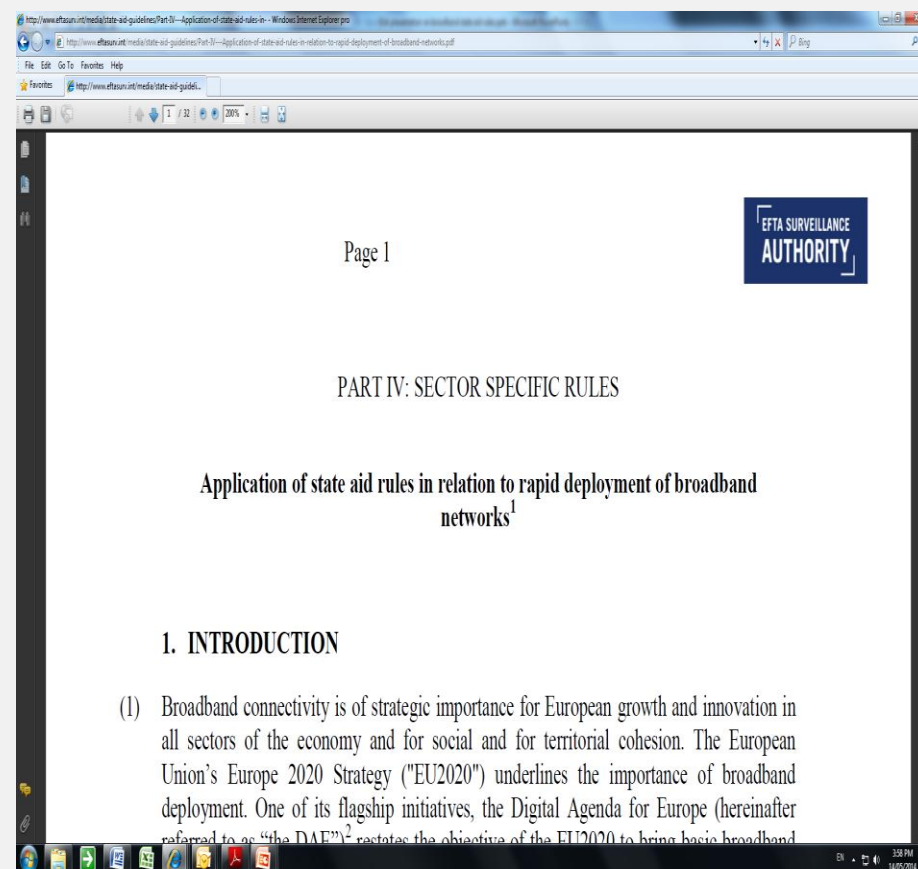


New general block exemption regulation

- New European Commission GBER adopted in principle on 21 May 2014, due to enter into force at EU level on 1 July 2014
- More responsibility for States in ensuring compliance with the rules (self-assessment)
- Certain broadband measures can be assessed under new GBER if conditions/criteria met and notification threshold not exceeded
- Criteria concern *inter alia* correct identification of market failure and promotion of competition and technological neutrality

The Broadband Guidelines

- If measure entails state aid and self-assessment criteria not met (and other notification procedures not appropriate) ➡ notify draft measure to ESA under Broadband Guidelines
- Standstill obligation applies while compatibility with EEA Agreement assessed

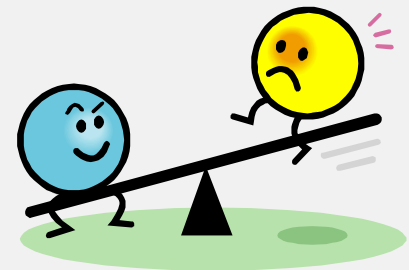




The Broadband Guidelines contd.

➤ Balancing test seeks to address if:

1. Aid is aimed at a **well-defined objective of common interest?**
2. Aid is **well designed** to deliver the objective?
 - Appropriate policy instrument?
 - Incentive effect?
 - Proportionate?
3. **Distortions of competition and effect on trade limited**, so overall balance is +ve?



The Broadband Guidelines contd.

➤ Step 1 - Every aid measure has to comply with all of the necessary compatibility conditions

➤ Step 2 – If all necessary conditions met, balance +ve against potential -ve effects

(See section 2.5.1 of Broadband Guidelines)

<i>Necessary Conditions</i>
1. Contribution to the achievement of objectives of common interest
2. Absence of market delivery due to market failures or important inequalities
3. Appropriateness of state aid as a policy instrument
4. Existence of incentive effect
5. Aid limited to the minimum necessary
6. Limited negative effects
7. Transparency

The Broadband Guidelines contd.

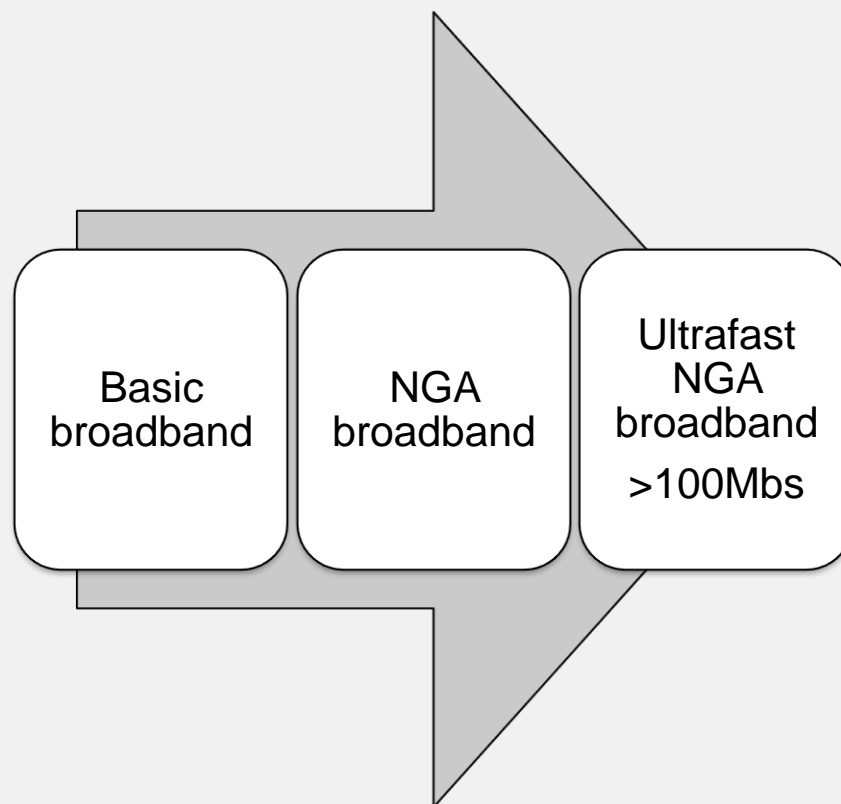
- *Objective of common interest? Market failure/equity?*
- To identify existence of market failures, Guidelines use *white, black or grey areas* depending on availability of existing or planned infrastructure in near future, i.e. 3-year period or, if granting authority takes longer time horizon for subsidised network deployment, same time horizon to assess commercial plans (see *inter alia* paragraphs 59-61 of Broadband Guidelines)

Scope for state intervention in broadband deployment



The Broadband Guidelines contd.

- *Aid is appropriate, creates incentive effect, is limited to minimum necessary and effect on competition is limited?*
- Every project needs to show **step change** in terms of broadband availability
 - Selected bidder makes significant new investments
 - Significant new capabilities in terms of broadband availability and capacity, speeds and competition





The Broadband Guidelines contd.

➤ *Aid limited to minimum necessary, limited negative effects, transparency?*

Necessary Criteria
a) Detailed mapping + analysis of coverage
b) Public consultation
c) Competitive selection process
d) Most economically advantageous offer
e) Technological neutrality
f) Use of existing infrastructure
g) Wholesale access
h) Wholesale access pricing
i) Monitoring and claw-back mechanism
j) Transparency
k) Reporting

- All of these compatibility criteria must be fulfilled for all measures involving state aid (*section 3.4*)
- Additional wholesale access + fair and non-discriminatory criteria for NGA measures (*section 3.5*)
- Additional requirements for ultra-fast NGA networks in black NGA areas based *inter alia* on open, wholesale-only access model and avoiding crowding out of private investors (*section 3.6*)
- NRA involvement encouraged in particular for criteria a), f), g) and h)

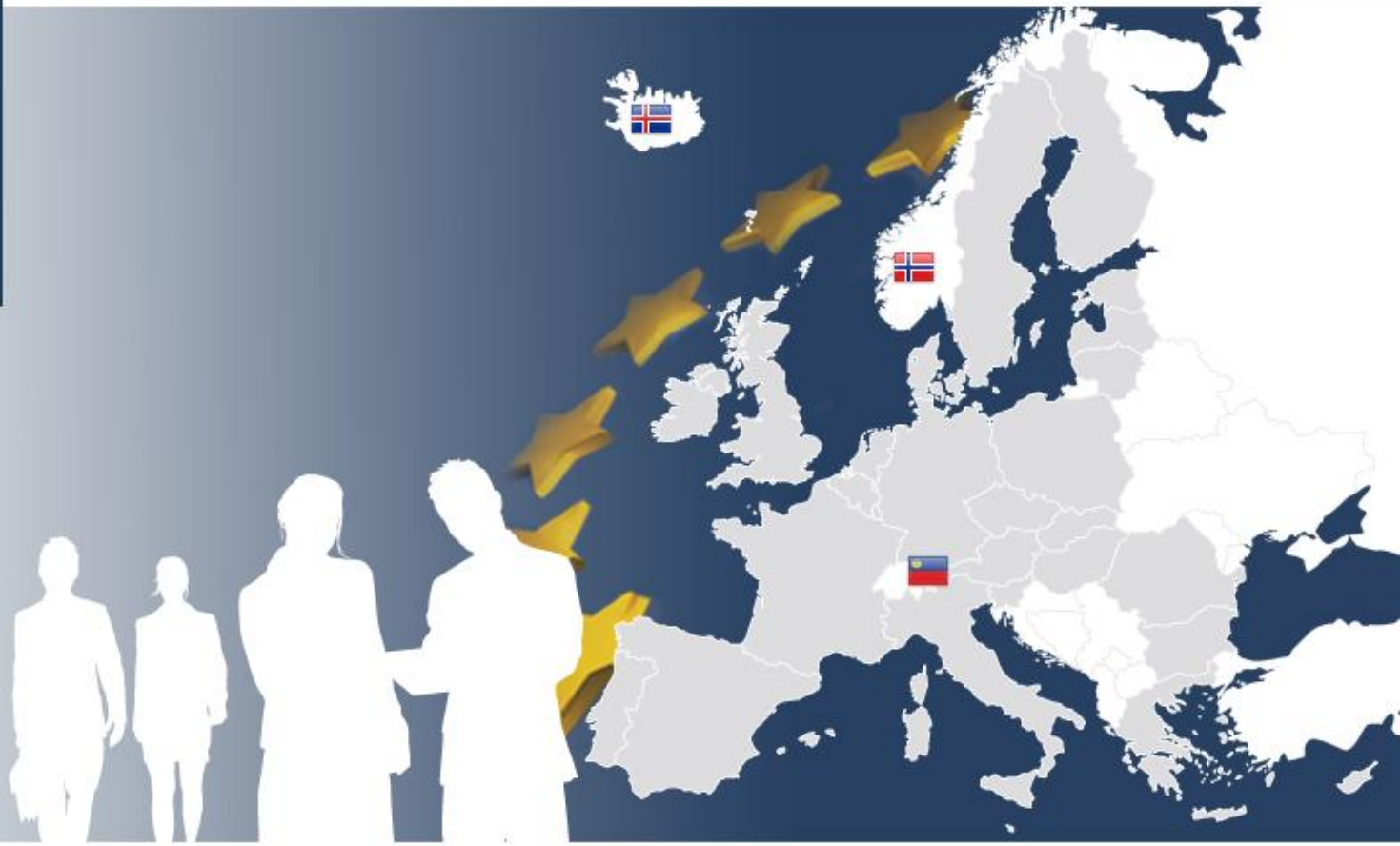


Useful information and contacts



Useful links

- ESA's State Aid Guidelines <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>
- Register of ESA's State Aid Decisions - <http://www.eftasurv.int/state-aid/state-aid-register/>
- List of European Commission's State Aid Broadband Decisions - http://ec.europa.eu/competition/sectors/telecommunications/broadband_decisions.pdf
- European Commission's Practical Guidance on Broadband State Aid Rules - <https://ec.europa.eu/digital-agenda/en/news/handbook-decision-makers-broadband-state-aid-rules-explained>
- European Commission's Block Exemption Regulations - http://ec.europa.eu/competition/state_aid/legislation/block.html



Thank you!



eor@eftasurv.int