

## FAQ ON *EX ANTE* CONDITIONALITIES RELATING TO INFORMATION AND COMMUNICATION TECHNOLOGIES (ICT)

### EAC 2.1 ON DIGITAL GROWTH & EAC 2.2 ON NGN PLAN

This list of frequently asked questions is based on comments received from Member States (MS) on Part II of the Guidance on *ex ante* conditionalities as regards ICT (EAC 2.1, 2.2).

#### EAC 2.1 on Digital growth

- "We suggest extending the scope of applicability of this *ex ante* conditionality to ESF investments in e-applications (Art.3.2(b) of ESF Regulation) and to ERDF investments in broadband (Art. 2.2(a) of ERDF Regulation)."

Commission's reply: Annex XI, part I of the CPR identifies the investment priorities to which *ex ante* conditionalities are linked. Therefore, EAC 2.1 relating to Digital growth will only be applicable if a MS or region is planning to allocate ERDF funding to develop ICT products and services, e-commerce and enhancing demand for ICT (Art. 5(2)(b) of the ERDF Regulation) or to strengthen ICT applications for e-government, e-learning, e-inclusion, e-culture and e-health (Art. 5(2)(c) of the ERDF Regulation).

- Sub-criteria relating to the required analysis for demand and supply on ICT go beyond the Regulation.

"Instead of requesting that this *analysis should cover all the relevant socio-economic issues related to demand for ICT and supply measures*, we propose using Benchmark indicators for Digital Agenda for Europe. We also propose deleting *the summary of the results of analysis of ICT demand and supply* as it induces additional burden and use of resources."

Commission's reply: Sub-criteria identified in the assessment grids aim at describing the Commission's expectations for each criterion and at ensuring consistency between Member States through a common framework.

As regards EAC 2.1 on Digital Growth, Member States need to demonstrate that their policy framework for Digital growth is based on an analysis for demand and supply on ICT. In order to check the fulfilment of this criterion, the Commission has suggested that this analysis should cover all the relevant socio-economic issues related demand for ICT and supply measures. This would indeed ensure the relevance and the soundness of this analysis. In any cases, the Commission should have an access to its results.

The Guidance was made available for Member States to let them know how the Commission will assess the requirements set out in Annex XI of the Regulation. However, there is no regulatory obligation to make use of it.

- Need for clarifications (concrete examples would be welcome) for the criterion relating the assessment of the needs to reinforce ICT capacity-building.

Commission's reply: There are various means to ensure an effective delivery of ICT measures so it is not possible to recommend any specific "one-size-fits-all" model. The key questions would relate to the clarity in the division of competencies, transparency of the decision making process, easy access to relevant information and support tools, adequate technical assistance and regional presence, if necessary.

One possible way is the establishment of a national/regional agency coordinating policy initiatives in that area, providing technical assistance (on technology, state aid, procurement, etc.) and monitoring their implementation and assessing their impact.

## **EAC 2.2 on Broadband**

- NGA Plan: separate document or integrated in the relevant strategic document?

Commission's reply: It could be either a separate document (e.g. ad hoc national/regional "high-speed broadband Plan") or integrated within a broader strategy for ICT or smart growth (e.g. a national/regional "digital agenda"). However, given the complexity of drafting national/regional broadband plans, the former option is recommended by the Commission.

- Risk of inconsistencies between the information expected from Member States according to the assessment grid relating to EAC 2.2 and the EU Guidelines for the use of State Aid rules in relation to rapid deployment of broadband networks

"Difficulties are found in the fact that the wording of EAC 2.2, including the text of the assessment grids are gradually turning more in the direction that does not help to clarify this issue. Therefore, we expect that the process of examining the fulfilment of EAC could not be automatic and rigid, but should be realistic and flexible, so the meaning and purpose of the cohesion policy would be met. We assume that by following the procedures from the above mentioned Guidelines the EAC 2.2 would be automatically fulfilled."

Commission's reply: The fulfilment of EAC 2.2 will be checked against the criteria mentioned in Annex XI Part I of the CPR. Sub-criteria identified in the assessment grid aim at describing the Commission's expectations for each criterion and at ensuring consistency between Member States through a common framework.

These sub-criteria (especially those regarding the identification of *planned* investments) were drafted in such a way that they be consistent with the State Aids guidelines for broadband investments<sup>1</sup>. However, the validation of an EAC 2.2 does not amount to a Commission approval of a notification for national or regional State Aids scheme in the same territory.

- Question about the sub-criterion relating to "a map of existing private and public infrastructures and planned investments, as well as data on coverage and take-up".

"Please note that to collect information about the infrastructure of the private entities (operators) and its planned investments of the development is extremely difficult. This information provided by different operators tends not to be shared, as it may be considered as a commercial secret. However, the private operators will be provided with the possibility to specify or present the additional data to the given information. Whether the EC will verify

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF>

that kind of practice is acceptable and whether such action will be seen as the fulfillment of this criterion?"

Commission's reply: The *ex ante* conditionality 2.2 relating to broadband has been put in place in order to ensure that EU funding is complementary and does not substitute investment of market players. Therefore, in order to concentrate EU funding in areas where broadband networks tend to be less profitable, NGN Plans should take account of existing private and public infrastructures and planned investments.

The Commission will expect the MS authorities to explain if and how private stakeholders have been involved in the mapping of existing infrastructure and future private investments, which constitute the basis to plan public intervention.

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- Under the measures to stimulate private investment, it is not clear why this has to include the schedule for the authorisation of EU harmonised bands for wireless broadband. It is not mentioned explicitly in the criteria for fulfilment and should be deleted from the grid.

Commission's reply: In its Staff Working Document on the implementation of national broadband plans (March 2012), the Commission identifies three types of measures to facilitate investment (p.12-16):

- measures to reduce the cost of passive infrastructure, e.g. through infrastructure sharing and co-deployment;
- measure to facilitate investment planning through coverage mapping, planning powers and standards;
- spectrum policy. The idea is to ensure that sufficient spectrum for coverage and capacity purposes is available within the Union to enable wider availability of wireless broadband services. *"At this point the most pressing issues in the arena of spectrum policy are the assignment of mobile broadband spectrum in the 800MHz (digital dividend) and 2.6 GHz bands as well as initiatives to increase efficiency in the use and management of existing bands, particularly better conditions for spectrum trading and sharing."*

That is why the Commission has suggested the following sub-criterion in the assessment grid of EAC2.2: *"If relevant, the NGN plan contains the schedule for the authorisation of EU harmonised bands for Wireless Broadband in line with the Radio Spectrum Policy Programme"*. This measure would certainly foster private investment in broadband and implies planning the assessment of market demand for any unassigned EU harmonised spectrum for Wireless Broadband or spectrum sharing/trading measures, in line with the provisions of the Radio Spectrum Policy Programme.

As all sub-criteria identified in the assessment grids, this sub-criterion aims at describing the Commission's expectations for each criterion and at ensuring consistency between Member States through a common framework. But there is no regulatory obligation to make use of it.