Explanatory note accompanying the proposal for the targeted GBER revision

The purpose of this note is to clarify the objective and scope of the proposal to revise the General Block Exemption Regulation[1] ("GBER") based on the results of a comprehensive State aid policy evaluation, the Fitness Check[2], and to align it with the revisions of certain State aid Guidelines[3]. This note accompanies the public consultation on this GBER proposal. This revision follows on from the revision of the GBER adopted on 23 July 2021.

Public funding that fulfils the conditions of State aid as defined in Article 107(1) of the Treaty of the Functioning of the European Union ("TFEU") must normally be notified to the Commission and approved before it is put into effect. The principles underlying EU State aid rules serve to ensure that public spending does not cause unfair competition for companies operating within the EU's internal market. More specifically, these principles help to ensure that public money does not replace private investment, serves general policy objectives and does not go beyond the amounts needed to meet these objectives. Member States are not obliged to notify State aid to the Commission, if the aid in question falls under *de minimis* rules or meets all the relevant criteria set out in the GBER.

The purpose of the amendments subject to this public consultation is to modify the GBER in a targeted way that ensures that it complements well the relevant State aid Guidelines being revised in parallel and to ensure that the rules cater appropriately for market and technological developments and the new Commission priorities, in particular the European Green Deal and the Industrial and Digital Strategies. By further simplifying and clarifying these rules, the amendment will improve legal certainty and facilitate Member States' implementation of aid measures promoting the green and digital transition, while limiting possible competition distortions to the minimum.

More concretely, the proposal is to revise the GBER in order to facilitate for Member States to implement State aid measures in the following areas without prior notification:

- Regional aid;
- Risk finance aid;
- Research and Development and Innovation ("R&D&I") aid;
- Environmental and energy aid.

This initiative relies largely on evidence and data collected in the context of the Commission's Fitness Check of State aid rules in combination with the Commission's market experience and experience stemming from its case practice. Given its nature as an accompanying measure to the revisions of State aid guidelines in the relevant areas, a separate impact assessment for this initiative was not deemed necessary.

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1 Commission Regulation (EU) No 651/2014 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, as last amended. Please note that a targeted revision of the GBER aiming to facilitate the interplay between State aid rules and certain EU Funding rules is ongoing and is foreseen to be finalised in the second half of July 2021.

2 Published on 30 October 2020, see: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2044-Fitness-check-of-2012-State-aid-modernisation-package-railways-guidelines-and-short-term-export-credit-insurance

3 The Energy and Environmental Aid Guidelines, the Regional Aid Guidelines, the Research, Development and Innovation Framework and the Risk Finance Guidelines.

1. Regional aid

Following the adoption of the Regional aid Guidelines ("RAG") applicable as from 2022, it is necessary to align the regional aid section of the GBER to avoid discrepancies between the two sets of rules. In addition, a small clarification is introduced to exclude from the costs eligible for regional aid the depreciation costs resulting from the use of certain assets during the period that they are used for an R&D&I project, as these are not investment costs in the meaning of regional aid. Amendments have also been added to the section on aid to small and medium-sized enterprises ("SMEs"), since the definition of initial investment is the same as for regional aid and to do away with an existing discrepancy between the sections on SMEs and regional aid with regard to eligible costs.

This GBER amendment proposal includes, in particular, the following changes:

- To align the sectoral scope for regional aid (exclusion of lignite, inclusion of synthetic fibers and shipbuilding, exclusion of support for broadband and research infrastructure under the regional aid section, clarification on the definition of the transport and energy sectors).
- To extend the possibility to grant operating aid to prevent or reduce depopulation, until now only possible for very sparsely populated areas, also to sparsely populated areas in line with the position adopted in RAG.
- To slightly adjust the notification thresholds for regional aid to clarify what they are, taking into account all the different intensities, but also to cater for higher thresholds for SMEs carrying out a project below EUR 50 million, to avoid that they are penalised by the adjusted aid amount approach, valid for larger projects.
- To exclude from regional aid costs for buildings, land, and equipment to the extent and as long as they are supported under the GBER rules on R&D&I project aid.
- To align the drafting of the section on SMEs with that of the regional aid.

2. Risk finance aid

The results of the Fitness Check confirmed that, overall, the State aid rules for risk finance implemented in 2014 worked well and contributed to addressing the market failure preventing SMEs in the EU from attracting the financing required for them to grow and succeed, and this without unduly distorting competition. At the same time, some changes should be put in place to facilitate the interpretation and implementation of these rules. Finally, the review of the rules takes also into account the European Green Deal and the Industrial Strategy (by including, for example, a 'bonus' for environmental aid as well as aid in the form of transfer of intellectual property rights for innovative start-ups).

The revision of the Risk Finance Guidelines ("RFG") has already started and a public consultation took place in order to gather the views from stakeholders and Member States. Since the RFG are the legal basis for the authorisation of risk finance aid schemes that go beyond the GBER, both sets of rules are closely connected and consistency between them has to be ensured. This is the main reason behind the proposed changes to the GBER section on aid for access to finance for SMEs, and to the related definitions in Chapter I of the GBER.

All changes proposed are based on evidence gathered during the Fitness Check. The proposed changes to the risk finance provisions in the GBER are in line with the ongoing revision of the RFG. The most significant changes are the following:

- To restructure the current Article 21 by splitting it into two Articles: one dedicated to risk finance aid via financial intermediaries, the other to risk finance in the form of tax incentives to natural persons investing in eligible undertakings. The new Article 21 has been restructured to better highlight the three-layered structure of risk finance aid: by investors, to beneficiaries, through financial intermediaries.

- To modify the eligibility criterion that allows companies to receive risk finance aid from "*seven years after their first commercial sale*" to "*10 years after their registration and/or, in the case of innovative enterprises, seven years after their first commercial sale*".

  - The modification to "*10 years after their registration*" is made to simplify the application of the GBER, because the registration of a company is defined while the first commercial sale is subject to different interpretations (for eligible SMEs that are not subject to registration, the ten-year eligibility period may be considered to start at the moment when the SME either starts its economic activity or is liable to tax for its economic activity).

  - The possibility for Member States to continue to use the current criterion "*seven years after their first commercial sale*" for innovative companies responds to the feedback received in the public consultation on RFG that such companies in the biotech, healthcare and microelectronics sector might have investment cycles of more than 10 years. Innovative enterprises are already defined in the GBER.

- To clarify the "extension of business" situation, for which the investment must exceed 50% of the SME's annual turnover to make that SME eligible to receive risk finance aid: Article 21 now refers to "new economic activity" instead of the more technical "new product or geographic markets". In addition, the proposal includes a green bonus (the investment must exceed only 30% instead of 50% of the SME's annual turnover) for investments improving environmental performance in line with the Taxonomy Regulation.

- To clarify that for the calculation of the maximum aided risk finance investment per beneficiary it is the outstanding amount at the moment of granting that is to be taken into account. This allows for repayment of the risk finance investment and for receiving further investment, as long as the beneficiary is still eligible.

- To reduce the minimum thresholds for private participation in risk finance investments for assisted areas under Article 107(3)(a) TFEU. This modulation takes into account disparities in access to non-bank funding, including risk finance among and within Member States, while keeping in mind that private participation is a necessary condition for risk finance aid as this ensures crowding-in, prudent risk assessment and appropriate financial due diligence.

- To widen the scope of Article 24 on aid for scouting costs to identify eligible undertakings in order to include the costs for investment research in eligible undertakings, in order to address challenges in the venture capital sector to reduce information asymmetries affecting such companies.

- To widen the scope of Article 22 on start-up aid to include aid in the form of transfer of intellectual property rights (IPR) from a research organisation where the underlying IPR has been developed to small and innovative enterprises that must bring a new product or service to the market.

- To clarify in the definition that only privately owned entities can be taken into account to reach the required investors' contribution to risk finance measures and that public or semi-public entities, such as national promotional banks and institutions or international financial institutions, cannot be taken into account for this purpose.

- To include in the definition of innovative enterprises (which for example allows the doubling of aid for start-up or the above-mentioned aid for IPR transfer) the recipients of European Innovation Council (EIC) funds or the EIC Seal of Excellence.

3. R&D&I aid

The GBER complements the provisions of the Framework for State aid for R&D&I ("RDIF"). It lays down compatibility conditions on the basis of which Member States can implement State aid measures without prior notification to the Commission. As announced in the context of the revision of the RDIF, when carrying out the current targeted GBER revision, the Commission will include a targeted amendment of the R&D&I-relevant GBER provisions in line with what has been proposed for the RDIF to ensure coherence of the State aid rules on R&D&I.

To address the above, the revised R&D&I related parts of the GBER contain mainly the following targeted improvements:

- To clarify certain concepts and definitions: First, it is proposed to clarify that "Digital Innovation Hubs", including those under the Digital Europe Programme, may qualify as innovation clusters as defined in the GBER. Second, the definitions of industrial research and experimental development activities need to be amended to clarify that R&D activities on digital technologies/solutions are included. Third, it is proposed to clarify that innovation activities of SMEs includes the uptake of digital solutions (such as support for services provided by research infrastructures, testing and experimentation infrastructures, innovation clusters or private digital experts).

- To introduce a new definition and compatibility criteria enabling support for testing and experimentation infrastructures - used predominantly by the industry for R&D activities such as developing and testing new technologies – that may also serve to incentivise R&D&I investments facilitating the twin transition. These kinds of infrastructures are also sometimes known as "technology infrastructures".

- To simplify the conditions for aid for R&D projects under Article 25 GBER, in particular by proposing the addition of possibilities to use a simplified cost approach to calculate indirect costs of R&D projects.

4. Environmental and energy aid

In line with the Green Deal objectives, it is proposed to enlarge the scope of the GBER by expanding the set of measures exempted from ex-ante notification and increasing the notification thresholds for climate, energy and environmental protection measures, whenever objectively justified. The proposed enlargement reflects the Commission's enforcement practice, takes account of technology and market evolutions and limits market and competition distortions especially for newer and larger measures. The main changes proposed, which are aligned with the draft revised Climate, Environmental protection and Energy Aid Guidelines ('CEEAG'), are the following:

Aid for environmental protection

- The proposal broadens the possibilities for Member States to support investments for the reduction of CO_2 emissions by including specific provisions under which investment aid for carbon capture and utilisation or storage is considered compatible and exempted from the notification requirement.

- To introduce a new specific category of exemption for investment aid for clean or zero-emission vehicles. Also, the proposal complements the provisions on investment aid for recharging and refuelling infrastructure which have recently been introduced as part of the targeted GBER revision accompanying the MFF 2021-2027 by (i) enlarging the scope of investment aid for refuelling infrastructures to those supplying low-carbon hydrogen; and (ii) covering also aid for recharging and refuelling infrastructure that is not publicly accessible.

- To introduce a 'green bonus' for aid for improving the energy performance of buildings, and with a view to incentivise ambitious building renovation projects. The bonus would apply where energy performance improvements lead to a significant reduction in primary energy demand.

- To widen the scope of the GBER in order to cover investment aid for the rehabilitation of natural habitats and ecosystems, the protection and restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation.

- To widen the scope of existing provisions on aid for the recycling and re-utilisation of waste, by covering also investment aid for other investments that aim at increasing the level of resource efficiency or contributing to the transition towards a circular economy.

- To provide that aid schemes in the form of tax reductions in favour of energy-intensive businesses under the Energy Taxation Directive are block exempted, provided these schemes require beneficiaries to comply with conditions ensuring an increase in energy efficiency and investments in projects leading to substantial reductions of the beneficiary's greenhouse gas emissions. Schemes not complying with these conditions will not be block exempted but can be notified to be assessed under the Guidelines on State aid for Climate, Environmental Protection and Energy (CEEAG), which are currently under revision. The Commission specifically seeks comments on the introduction of these conditions under the proposed GBER.

- To introduce a new category of exemption for aid in the form of reductions in environmental taxes or levies, which are needed for certain resource-intensive sectors.

- To provide additional flexibility by foreseeing higher aid intensities, especially where aid is granted in the context of a competitive bidding process.

Aid for the promotion of energy from renewable sources

- To increase notification thresholds while taking account of the cost reduction of mature technologies and their market integration.

- To cater for the increased role of storage for the integration of renewable energy in the electricity system and to align with the draft CEEAG, the exemptions for investment and operating aid for renewable energy are proposed to be widened to include storage projects that are directly connected to new or existing renewable energy generation facilities.

- To facilitate investments in green hydrogen, the proposed amendment will cover investment aid for green hydrogen projects. Operating aid for small scale installations for the promotion of green hydrogen will also be exempted from the notification requirement.

- To include, in line with the recast Renewable Energy Directive, provisions for operating aid to renewable energy community projects, exempting projects below 1 MW of installed capacity from competitive bidding.

Aid for district heating and cooling systems and energy infrastructure

- In order to adapt the existing rules on support to district heating and cooling systems and energy infrastructure to the Green Deal objectives, the proposed GBER amendment clarifies existing rules and aligns them with the Green Deal Objectives, as done in the Sustainable Europe Investment Plan (SEIP)[4] annexed to the Green Deal Communication.

- In addition, support for investments in district heating systems which are based on fossil fuels cannot be considered eligible under the GBER. For support to investments in district heating generation using natural gas, as well as investments or upgrades of distribution networks, specific safeguards are introduced, such as “compliance with climate targets” in order to prevent lock-in and guarantee competition, in line with the Green Deal objectives.

- With regard to investments in energy infrastructure, support is allowed for energy infrastructure for new energy sources, notably hydrogen infrastructure. Furthermore, support is allowed also for investments not located in “assisted areas”. Finally, support to energy infrastructure investments for natural gas needs to be adjusted to take into account the Green Deal Objectives and necessary compliance with climate targets.

[4] Commission Communication- Sustainable Europe Investment Plan European Green Deal Investment Plan, COM/2020/21 final