Contribution to the public consultation for the modification of the General Block Exemption Regulation (GBER)

The Hauts-de-France (Nord-Pas-de-Calais-Picardie) Region is the biggest managing authority of Structural Funds in Europe: it is hosting three European Territorial Cooperation (ETC) programmes and one EC Initiative (Urban Innovative Actions) besides the regional ERDF and ESF programmes.

Thus, the Hauts-de-France Region has a privileged insight and experience concerning the application of state aid rules in the following fields:

- the regional programmes (ERDF and ESF), where the state aid rules have to be applied in a purely national and regional context;
- the ETC programmes, where the state aid rules have to be applied in a cross-border, transnational or interregional context covering 4, 7 or 28 Member States.

The state aid rules (De Minimis, GBER, etc.) seem to be designed to define a framework that mainly addresses the public funding provided in a purely national or regional context (aid granted through state resources). However, the European Territorial Cooperation context is - by definition - different, complex, and characterized by the following elements:

1. **Shared management and involvement of several Member States in the decision making process for the projects selection and approval:** this important aspect prevents the use of public funds for purely national purposes and reduces considerably the risk of a distortion in the internal market;
2. **Added value of cooperation between organizations based in different Member States and the genuine European interest of ETC projects:** this key requirement ensures that approved projects deliver concrete outputs and results through a real cross-border, transnational or interregional cooperation (obligation of means and of results). The impact of this cooperation is always measured through a European benchmark which goes beyond the national borders of the countries involved. The risk of a selective economic advantage is, by definition, very limited since the final beneficiaries of the ETC projects are *in fine* the European citizens;
3. **Limited financial resources:** for the 2014-2020 programming period, the ERDF budget allocated for each of the three ETC programmes managed by Hauts-de-France Region ranges from EUR 256 million to EUR 370 million, the number of projects potentially approved will range between 100 to 200, while the number of beneficiaries involved will range from 600 to 2000 (i.e. an average budget per beneficiary of EUR 250 K);
4. **ERDF financing rates between 60% and 85%:** unlike other initiatives directly managed by the European Commission (i.e. Horizon 2020), the ETC Programmes have a limited ERDF financing rate;
5. **Result orientation and intervention logic:** the ETC programmes have also to be included in the new result-oriented approach of the European Commission. Thus, they have to ensure outputs and planned results instead of focusing on individual activities undertaken by projects. Nevertheless, in case of a likely state aid risk, the GBER requires to frame each individual activity, applying specific intervention rates and/or eligibility rules;
6. **Typical multi-partners structure of ETC projects and involvement of several partners located in different Member States:** each ETC project involves several partner organizations under the coordination of a lead partner. Within an ETC project, each project partner is supposed to deliver several activities. This structure, which is the core of European Territorial Cooperation, does not allow to comply perfectly with the provisions

laid down in the GBER: indeed, for a partnership that has to deliver several activities within the framework of the same project, it is technically impossible to allocate different intervention rates and eligibility rules as the application of several GBER articles would require.

On the basis of the above listed elements, we think that the risk that European Territorial Cooperation programmes may have an impact on the internal market and distort competition remains very limited.

However, the ETC programmes are not exempted from the application of state aid rules, even if the existing legal framework seems not to take fully into consideration the specificities of European Territorial Cooperation. For instance, as indicated in point 6 above, in a case where the same beneficiary is responsible for several activities (some of which are of an economic nature while others are not) the GBER seems not to consider the complexity related to the application of different intervention rates and eligibility rules.
Currently, the fact that the GBER is not adapted to ETC specificities leads to very complex procedures having negative impacts on the projects side (i.e. the application of the lowest intervention rate to all the activities delivered by the beneficiary, including those that are not concerned by state aid risk and that could be financed with a much higher intervention rate).
The direct consequence of such a complicated scheme is certainly an increase of the risk of errors which, if proven, would lead to the recovery of the granted ERDF.

Potential beneficiaries could be discouraged by the complexity and the financial constraints of such a scheme and could therefore decide not to participate anymore in ETC Programmes afterwards. The statistics presenting the low application rates for the first calls for projects of some ETC programmes already show this reality.

This is the reason why Hauts-de-France Region decided to take the opportunity given by the on-going public consultation on the GBER modification concerning aids granted to ports and airports, in order to share the difficulties related to the limits of the application of the GBER to ETC Programmes.

We agree with the definition of European Territorial Cooperation programmes published by DG REGIO on its website: *« the overarching objective of European Territorial Cooperation (ETC) is to promote a harmonious economic, social and territorial development of the Union as a whole »*. This definition highlights how ETC contributes to the promotion of a harmonious economic, social and territorial development all over Europe. In line with the content of this definition, we find relevant to consider that ETC programmes shall be completely exempted from the application of state aid rules (as for Horizon 2020), given the low risk of competition distortion for these programmes thanks to their shared management, their transnational coverage and the cross-cutting added value ensured by the cooperation.

In the absence of this kind of exemption, we welcome the use of article 20 of the GBER, which aims at ensuring a clear and adapted framework fitting the specificities of European Territorial Cooperation projects. Nevertheless, we would like to propose a modification of this article in order to take fully into account the specificities of ETC programmes, in particular the following aspects:

1. The current wording of article 20 mentions only SMEs. However, the organisations that will be involved in ETC programmes for the 2014-2020 period will have different status and will be linked to the economic sectors targeted by the European Commission investment priorities (economic development, innovation, research etc.). Therefore, **the first modification proposal for article 20 would be to replace the term "SME" with "undertaking"**: this would enlarge the scope of article 20 and facilitate its application to all the organisations participating in ETC programmes;

2. The current version of article 20 does not cover all the economic sectors targeted by ETC programmes (for instance, there is no reference to fisheries and aquaculture sectors). Given the focus on regional development, ETC projects involve a variety of sectors. **The second modification proposal for article 20 would concern the definition of economic sectors covered by this article in order to include all the economic sectors related to regional development;**
3. Article 20 currently indicates a maximum intervention rate of 50%, while the majority of ERDF financing rates for ETC programmes in Europe exceeds by far this percentage. **Our third modification proposal would be either to align the maximum intervention rate of article 20 with the maximum ERDF financing rate of 85%, as article 120 of Regulation 1303/2013 indicates for ETC programmes, or to eliminate the maximum intervention rate, while maintaining the notification threshold of 2 million euros per beneficiary and per project.**

In annex 1, we propose an example showing the effects of the application of article 20 before and after the modifications.

ANNEX 1 – EXAMPLE OF THE APPLICATION OF ARTICLE 20 BEFORE AND AFTER THE MODIFICATIONS

- Beneficiary concerned by state aid risk in the framework of ETC project : **Chamber of Commerce and Industry (public status / more than 250 employees)**
- Beneficiary's budget: **2.500.000 €**
- ERDF rate for the programme : **85% (2.125.000 €)**
- Other national public contribution given to the beneficiary : **15% (375.000 €)**
- Project intervention sector: **aquaculture**

Current application of article 20	
Concerned beneficiary	**Not eligible** under current article 20
Partner's budget	ERDF must be **reduced to maximum 2.000.000 €**
Intervention rate	The intervention rate **is limited to 50%. ERDF must be further reduced up to a maximum of 1.250.000 €**
Other national public contribution	If ERDF already accounts for 50% of the eligible budget, **no other national contribution** can be allowed
Intervention sector	**Not eligible** under current article 20

Application of article 20 including the modification proposals	
Concerned beneficiary	**Eligible** under modified article 20
Partner's budget	ERDF must be **reduced to maximum 2.000.000 €**
Intervention rate	**No further reduction within the threshold of the ERDF budget**
Other national public contribution	If ERDF already accounts for 85% of the eligible budget, **no other national contribution** can be allowed
Intervention sector	**Eligible** under modified article 20