



Warsaw, 30th September 2020

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**European Commission**  
Directorate-General for Competition, Unit H1  
State aid Registry  
1049 Bruxelles /Brussel  
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Ref.: HT.4131

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**SUBJECT:** Review of the Regional Aid Guidelines (RAG) 2014-2020 – public consultations.

Dear Sirs,

below we provide as a Company (legal and tax consultancy) our comments in response to the invitation to consult the draft Communication from the Commission - Guidelines on regional state aid (hereinafter "**Guidelines**" or "**RAG**").

We assess very positively the initiative of the European Commission to revise the RAG. Several key issues for companies applying for state aid have already been reflected in the draft presented by the Commission. At the same time, we allow ourselves to briefly present our suggestions for both RAG as well as GBER (in areas related to the subject of RAG).

The issues presented below result from interpretation doubts that concern both the RAG - GBER relation, as well as the method of defining selected important definitions.

We believe that the consultations will allow to develop a complete, consistent and possibly unambiguous regulation.

#### **COMMENTS ON THE DRAFT GUIDELINES**

##### **1. Relocation of activities and the causal link introduced in the Guidelines (paragraph 124.)**

As we understand, the mechanism for assessing whether there is a relocation of the activity within the EEA is separate in the RAG and in the 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 (hereinafter "**GBER**"). Therefore, if there is a relocation it is possible to notify the aid measure on the basis of the Guidelines and then, in the notification procedure the Commission analyses if there is the causal link between the aid and the relocation (one of the criteria for assessing compatibility with the internal market).

In our opinion, it is worthwhile for the European Commission to explain whether the causal link should also be examined in the case of plans of granting state aid based on the GBER regulations or not, i.e. whether it is possible to grant aid under the GBER when there is no link between the relocation and the aid granted.

Although we are aware that this is not an issue directly related to the new RAG project, it may not be unambiguous for many entities planning investments covered by the regional investment aid under GBER.

## 2. Vendor tooling (paragraph 27.)

We assess very positively the clarification of the eligibility conditions for the costs of acquiring fixed assets constituting vendor tooling. This is still an issue in which the Polish tax authorities often take a position unfavorable to taxpayers using public aid in the form of income tax exemption (in the absence of regulations in this regard).

We believe that it is worthwhile for the European Commission to clarify whether similar principles can be applied to aid measures under the GBER.

Although we are aware that this is not an issue directly related to the new RAG project, it may not be unambiguous for many entities planning investments covered by the regional investment aid under GBER.

## 3. Definition of the beginning of an investment (paragraph 20 (y))

It is unambiguous that the purchase of real estate (land) is not considered the beginning of an investment. However, in our opinion it would be worth specifying that the lease of real estate (land) is not a beginning of an investment either.

## 4. Proposal of introducing legal definitions:

- **unrelated (related) entities in the context of the purchase of intangible assets** - paragraph 35(c) - in our opinion, it is worth considering a clear definition of the scope of such entities - e.g. by referring to related entities from the EC recommendations on the definition of SMEs (2003/361/EC).
- **maintenance of the investment** – this issue is due to doubts which arise in practice. For example if a key production line is sold after 5 years from the date of entry into the register of fixed assets but the business activity is still carried out - the question is whether this means that the investment is maintained in a given area or not.
- **the completion of the investment** - we have frequently encountered doubts, as to what is meant by the completion of the investment, i.e. what is the point of such completion (whether, for example, acceptance the last asset for use or bearing the last cost of the investment).

We would be pleased if the European Commission take note of our comments.