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Revision of the Regional Aid Guidelines

1. INTRODUCTION

Confederation of Norwegian Enterprise (NHO) would like to thank the European Commission for the opportunity to comment on the Communication on the Guidelines on regional state aid (RAG). NHO welcomes the proposed amendments to the RAG in order to simplify and clarify the rules and avoiding any inconsistencies with the provisions of the GBER.

NHO is Norway's largest organisation for employers. Our current membership of 28.500+ companies ranges from small family-owned businesses to multinational companies in most sectors. Our main objective is to create and sustain conditions that safeguard the competitiveness and profitability of economic growth and sustainable development. NHO is made up of 16 Sectoral Federations and 10 Regional Offices around Norway. While NHO has a cross-sectoral responsibility for the members' interest, each sectoral federation covers industry-specific issues.

The Regional Guidelines (RAG) 2014-2020 are due to expire at the end of 2020 and were extended on 2 July 2020 until the end of 2021. On 23 July 2020, the Commission published its draft Regional Aid Guidelines that will apply to aid granted as of 1 January 2022. In addition, the Commission plans a mid-term review of the regional aid maps in 2024, which will take into account statistics of the years 2020 to 2022. The regional aid articles in the GBER, which are not in scope of this consultation, will remain valid until 31 December 2023.

Social security contributions have been regionally differentiated in Norway since 1975. The objective of the notified measure is to reduce or prevent depopulation in the most sparsely populated regions in Norway by stimulating employment. Facilitating a better population development in very sparsely populated areas is a key element of Norwegian regional policy. This is, in line with EU cohesion policy, linked to the perspective of making use of all parts of the country contributing to economic and social development.

The above-mentioned scheme is a tax scheme, general/horizontal in nature and designed to offset employment costs. Accordingly, undertakings located in the least populated areas pay social security contributions at a reduced rate; the more severe the disadvantages are, the lower rate. The reduced rates only apply in *very* sparsely populated areas and are determined on a general basis according to a range of parameters in the area in which the undertaking is registered/carrying out its business. The parameters are more precisely very low population density (less than 8 inhabitants per square kilometre), poor population development, the degree of remoteness and the development in the labour market. Labour is the most influential factor on people's choice of residence. Therefore, any scheme aiming to prevent or reduce

depopulation needs to address the functioning of the labour market, to be sufficiently targeted and efficient. The operating aid scheme is the least distortive way the authorities could achieve the abovementioned objective. Also, a direct subsidy of labour costs through the notified scheme is a better and more targeted instrument for achieving the stated objective.

2. PURPOSE OF REGIONAL AID

The primary objective of State aid control in the field of regional aid is to allow aid for regional sustainable development while ensuring a level playing field between Member States. Regional aid can play an effective role if it is used sparingly and proportionately and is concentrated on the most disadvantaged regions of the EEA. Furthermore, regional aid can be effective in promoting the economic development of disadvantaged areas if it is awarded to induce additional investments or economic activity in those areas. In certain well-identified cases, the obstacles that these particular areas may encounter in attracting or maintaining economic activity may be so severe or permanent that investment aid alone is not sufficient to allow the development of the area. Hence, regional operating aid not linked to investment only, is of vital importance, and should on no account be confined compared to the current guidelines.

Furthermore, the economic disturbance created by the COVID-19 outbreak, might have long-lasting effects on certain regions. While acknowledging that the Commission may consider compatible with the internal market on the basis of Article 107(3)(b) TFEU aid schemes that consist in temporary deferrals of taxes or of social security contributions which apply to undertakings (including self-employed individuals) that are particularly affected by the COVID-19 outbreak (Temporary Framework), for example in specific sectors, regions or of a certain size, NHO is of the firm view that a legal basis for operating aid within the Regional Aid Guidelines is necessary in order to prevent depopulation in the most sparsely populated regions by stimulating employment.

3. SCOPE OF REGIONAL AID

3.1 Sector exclusions

According to the revised draft guidelines, the possibility to grant aid under RAG to **broadband and research infrastructure** have been removed. As stated by the Commission, it is not aware of any actual use of those provisions and it seems preferable that any aid to those two sectors should be governed by the specific guidelines.

NHO would like to strongly emphasise that Norway over several years has granted aid to the above-mentioned sectors under the RAG, more precisely under the national scheme of regionally differentiated social security contributions mentioned above. The scheme is available to companies in all sectors eligible for aid under the EEA rules as well as activities which fall outside the scope of the EEA Agreement¹. The exclusion of aid under the RAG to the broadband and research infrastructure sectors would cause distortion of competition for those sectors compared to other sectors eligible for aid under the scheme and should be avoided. The broadband and research infrastructure sector should be treated at an equal footing to other

¹ The aid to the latter group of activities falls outside the scope of the notified scheme.

undertakings eligible for aid under the scheme within the same geographical area. This will increase the efficiency of the scheme by decreasing compliance costs and administrative burdens following from sector exclusions, both for affected companies and for national authorities monitoring the scheme. Comparable treatment between sectors would also be within the logic of the system (RAG as horizontal guidelines) and would, in the view of NHO, rectify a lack of consistency in the present proposal.

Moreover, the Commission seems to base its revised draft guidelines also on the European Digital Strategy that was presented on 19 February 2020. Having in mind the Strategy's objective of development, deployment and uptake of technologies that makes a real difference to people's daily lives throughout Europe and creating a strong competitive economy, coupled with the fundamental transformation of the labour market created by COVID-19, it seems even more unfortunate and unreasoned to exclude the broadband and infrastructure sectors from the scope of the RAG.

During the previous review of the Guidelines in 2013, the energy and transport sectors were exempted from the scope of the Guidelines. Transport and energy sectors in remote regions were unable to benefit from State aid, and consequently many operators had their basic rules for presence in such areas altered at short notice. Such abrupt changes to fundamental rules had a detrimental effect on the industry and led to some national authorities forced to put comprehensive compensation programs in place as a result. Under pressure from various stakeholders, the rules were reintroduced in 2017 through the General Block Exemption Regulation. However, such swift and unexpected changes are disruptive and should be avoided in the future. Despite the reintroduction, and based on the considerations above, we are of the view that the said sectors should be allowed under the scope of the revised RAG 2014-2020.

3.2 Firms in difficulties

According to paragraph 18 of the draft regional aid may not be awarded to firms in difficulties, as defined for the purposes of these guidelines by the Commission guidelines on State aid for rescuing and restructuring firms in difficulty². As mentioned above, companies in very sparsely populated areas already face a wide range of problems. By excluding firms in difficulties from the scope of the RAG, the Commission removes a general/horizontal advantage and exacerbate already existing difficulties these companies face and could leave the affected region even more disadvantaged. Therefore, a targeted inclusion of these companies should be considered introduced under the scope of RAG – similarly to the Commission's Temporary Framework to enable Member States to support the economy in the COVID-19 outbreak.

3.3 Investment aid to large enterprises

It is important that regional aid is not used to attract and relocate jobs from one Member State to another. If this is unlikely, the Guidelines should encourage investment by already existing businesses (so called follow-on investments) that contribute to growth, jobs, and EU global competitiveness, and not solely focus on attracting new investors. The General Block Exemption Regulation, allows enterprises in "c" areas, initial investments in new economic activities (so called "greenfield investments") but "follow-on investments", such as diversification of existing establishments into new products or new process innovations, is currently subject to the notification obligation and therefore has to be assessed on a case-by-

² Community guidelines on State aid for rescuing and restructuring firms in difficulties, at paragraph 20

case basis under the Regional State Aid Guidelines. The Commission should therefore consider maintaining the possibility of regional aid to so-called follow-on investment within the RAG.

4. REGIONAL AID MAPS

4.1 Non-predefined "c" areas

The Commission is proposing a number of targeted adjustments to simplify and reflect experience gained from the application of the current rules. The European Union places considerable emphasis on cohesion policy, with the objective of bringing Europe's regions and cities closer together in economic, social, and environmental spheres.

For the purpose of laying down the criteria for identifying the areas that fulfil the conditions of Articles 107(3)(c) of the Treaty, the Guidelines distinguish between two categories of 'c' areas:

- a) areas that fulfil certain pre-established conditions and that a Member State may therefore designate as 'c' areas without any further justification ('predefined "c" areas');
- b) areas that a Member State may, at its own discretion, designate as 'c' areas provided that the Member State demonstrates that such areas fulfil certain socioeconomic criteria ('non-predefined "c" areas').

When Member States act on its own discretion based on certain conditions, the Commission considers that the criteria used by Member States for designating 'c' areas should reflect the diversity of situations in which the award of regional aid may be justified. According to the Commission, the designation of non-predefined "c" areas should address certain difficulties. In paragraph 174 of the draft Guidelines, the Commission states:

The Commission considers that the criteria used by Member States for designating 'c' areas should reflect the diversity of situations in which the award of regional aid may be justified. The criteria should therefore address certain socioeconomic, geographical or structural problems likely to be encountered in 'c' areas and should provide sufficient safeguards that the award of regional State aid will not affect trading conditions to an extent contrary to the common interest. (our underlining).

The Commission further emphasises that a Member State may designate as "c" areas the non-predefined "c" areas defined on the basis of inter alia the following criteria:

- e) *Criterion 5: contiguous areas of at least 50 000 inhabitants that are undergoing major structural change or are in serious relative decline, provided that such areas are not located in NUTS 3 regions or contiguous areas that fulfil the conditions to be designated as predefined areas or under Criteria 1 to 4.*

The Commission states in the draft that the population threshold will be reduced to "[...] 5 000 inhabitants for islands or contiguous areas characterised by similar geographical isolation".³

³ See in footnote 73.

Furthermore, for the purpose of applying Criterion 5, the Commission accentuate that the Member State concerned must demonstrate that the area is undergoing major structural changes or is in serious relative decline. This can be demonstrated by comparing the areas concerned with the situation of other areas in the same Member State or in other Member States on the basis of socioeconomic indicators concerning structural business statistics, labour markets, household accounts, education, or similar indicators (our underlining)⁴.

The criteria should therefore address certain socioeconomic, geographical or structural problems likely to be encountered in 'c' areas and should provide sufficient safeguards that the award of regional State aid will not affect trading conditions to an extent contrary to the common interest.

4.2 Notion of contiguous area

For the purpose of applying the criteria set out in paragraph 175 of the Guidelines, the notion of contiguous areas refers to whole local administrative unit⁵. The Guidelines do not address systematic or structural changes in local administrative units in Member States, such as the amalgamation of municipalities or other administrative changes in the municipal boundaries.

In the event of a municipality merger, the municipality can either

- Create a new legal organization number (declarant) for the newly established municipality. Enterprises/sub-entities from existing municipalities/counties must be linked to the new legal organization number, or
- Keep its legal organization number (declarant) and take over enterprises/sub-entities from one or more municipalities that cease to exist.

There will obviously be large changes to the municipal sector when it comes to population size and geographical size. On the other hand, essential parts of municipal activities will not be affected. The population of Norway will require the same services as before and live in the same locations, regardless of municipal borders. Likewise, distance to larger markets and suppliers remain the same. The same socioeconomic, geographical or structural problems are likely to arise.

During a period of five years, Norway has reduced the number of municipalities from 428 to 356 due to a politically enacted reform. The objective of the reform was mainly to secure a more effective administration at the local level. Consequently, a large number of municipalities, which previously were low population density areas, are now formally implemented in municipalities with a higher population density. However, the socioeconomic conditions in these areas, such as low population density, poor population development, the degree of remoteness and the development in the labour market and distance to markets and suppliers remain largely unchanged. The need for providing regional aid to such areas are therefore equally strong as prior to the structural changes due to the reform.

⁴ See in footnote 74.

⁵ See paragraph 176. The same notion is used in paragraph 169 concerning the designation of predefined "c" areas.

Based on the criteria in the Guidelines in paragraph 175 a) to e) criterion 1 through 5, these will effectively limit Member States from designating non-predefined “C” areas that fulfilled the criteria at an earlier stage going forward because of re-organization. Municipalities would be ineligible as recipients of regional aid due to administrative changes without receiving the intended effect of the award.

4.3 Importance of flexibility and measures for consideration by the Commission

In light of these concerns, NHO would strongly advise the Commission to assess the Member States’ need for flexibility when designating areas as “c” areas so that any Member State can obtain the necessary measures suitable for that State’s specific needs.

Changes in the administrative structures should not directly affect the eligibility to receive regional aid as a designated non-predefined “c” area. The Guidelines should allow for one of the following:

- a) Sub-dividing non-predefined “c” areas when designating local administrative units for the application of the abovementioned criteria at the Member States discretion, as stated in paragraph 175.
- b) A transition period for existing designated “c” areas that no longer fulfil the criteria due to structural and administrative changes in the established municipalities.

NHO shares the Commission’s view on the importance to better target state aid to areas most in need, but the challenges relating to depopulation and decreasing economic activity that are facing certain areas today is dependent on the new Regional Aid Guidelines providing flexibility to address the specific challenges within sub-areas of the municipalities. This is even more true when considering the long-term effects on business due to the Covid-19 pandemic.

A regional aid scheme based strictly on NUTS level or contiguous areas would not reflect the real situation in Norway concerning regional challenges related to sparse population, climatic conditions, and economic disadvantages. On the contrary, such strict criteria could in many situations lead to re-localization closer to relevant markets or abroad. It is important to emphasize that administrative borders in many cases differ from labor markets and local and regional economic markets. Such measure for the application of regional differentiation of the social security contributions within a tax neutral framework will allow Member States to counteract lower employment and settlement in the regions that cannot be designated as “c” areas and higher employment and settlement in those that still can.

NHO believes this scenario is not in line with the ambition of achieving better-targeted regional aid and enabling additional incentives for private investments in the most disadvantaged regions. A flexible approach to the delimitation of regions that should be eligible for regional aid will further the goal of stimulating rural employment to avoid depopulation and ensure that regional operating aid can be granted in regions where such aid is most needed. Regional aid is an important instrument to enhance regional development. The most extensive aid scheme in Norway is a regional aid scheme in the form of differentiated social security contributions. All employers in Norway are subject to compulsory contributions to the national social security scheme, calculated on the basis of the gross salary paid to employees. The objective of regionally differentiated social security contributions is to reduce or prevent depopulation in the most

sparsely populated regions of Norway by stimulating employment through reduced employment costs. The scheme will counteract discrepancies between market earnings and actual wages due to centralized wage formation and weak mobility in rural areas.

Each Member State may designate assisted areas covering at least 7.5% of its population. This means that all Member States may have assisted areas eligible to receive regional aid under Article 107(3)(c), which corresponds to Article 61(3)(c) of the EEA Agreement.

4.4 Concluding remarks

If the Commission decides that the notion of contiguous areas under paragraph 175 exclusively should refer to whole local administrative unit, NHO must stress that the Commission considers the potential unintended consequences in relation to the objective of a Member State's possibility to, "at its own discretion", designate areas as "c" areas under the derogation in Article 107(3)(c) of the Treaty. As a result, peripheral regions that face competitive disadvantages of location face exclusion from regional aid due to their administrative and formal inclusion in larger administrative units. Allowing for sub-division of municipalities or a transition period for affected areas could counteract the disproportionate competitive effects and aid in enhancing regional development.