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Comments on the draft of amendment of the General Block Exemption Regulation

The Technology agency of the Czech republic (TA CR) appreciates the initiative to amend the GBER. TA CR apply the following comments.

1. **Art I paragraph 4 lit c)**

The regulation concerning undertakings in difficulty can cause many problems in R&D especially with respect to SME's. According to the Art 14 of Preamble there is not intention to block exempt undertakings in difficulty, but there is a specific definition of undertakings in difficulty in Art 2 paragraph 18 for the purposes of GBER in order to provide legal certainty.

According to the Art 2 paragraph 18 lit a) a company is classified as an „undertaking in difficulty" *when more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.*
In order to fully understand and apply this definition it is necessary to clarify following terminology:

- *"deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount"* - it is not clear what is considered as "reserves" or "own funds of the company". According to the Czech Accounting standards the term "own equity" includes registered capital, other capital funds, retained earnings, earnings from current accounting periods. It is not clear whether in case of deduction of accumulated losses from the value of "own equity" would not lead to the negative cumulative amount, the undertaking would not be classified as an „undertaking in difficulty" without doing any other verifications;
  Or
- the only criterion to classify an „undertaking in difficulty" is when *more than half of its "subscribed share capital" has disappeared as a result of accumulated losses,* i.e. the value of accumulated losses is measured only against the value of "subscribed share capital" and not against the "own equity" as a whole. In many cases the indicator "subscribed share capital" does not reflect the true financial capability or financial health of an undertaking.

It is not also quite clear what is the time period, for which the undertaking must meet criteria of an „undertaking in difficulty". If it concerns some consecutive accounting periods or simply is sufficient that the criteria are met in one accounting period.

SMEs are at loss over consecutive periods, especially through the research and development phases. In some cases, they do not realise any profit on the investment until they sell the R&D output. But it does not necessarily mean that such undertaking is in difficulty.

TA CR thus suggests to add the aid for R&D realized by SME's as an exception set out in Art I paragraph 4 lit c).

Technologická agentura České republiky
Evropská 1692/37, 160 00 Praha 6
+420 234 611 111
info@tacr.cz, www.tacr.cz

Moreover TA CR would appreciate any effort leading to clarify the determination of an „undertaking in difficulty" having regard to uncertainties expressed above.

TA CR suggests adding in Art I paragraph 4 lit c) SME's R&D as an exception.

In case the amendment of Art I paragraph 4 lit c) as stated above is not accepted, TA CR suggests to prolong the period in which SMEs are not evaluated by definition of „undertaking in difficulty" (used in the Art. 2 paragraph 18) to 5 years.

2. **Art 22 paragraph 2 lit a)**

The period of 5 years after the registration is inconsistent with other provisions like in Art 2 paragraph 18 lit a) and b) (Undertakings in difficulty – 3 years) therefore TA CR suggests to harmonize all these provisions inclusive the definition of start-ups to 5 years. The goal is to achieve the same harmonization as in the case of SMEs eligible for the risk finance aid (see Art. 21 and Art. 2 paragraph 18).

The period for which the small undertakings are not evaluated by definition of „undertaking in difficulty" used in the Art. 2 paragraph 18 should be thus prolonged to 5 years so as the coherence between these two aid measures is ensured.