JUNE 2020

2ND CONSULTATION ON TARGETED MODIFICATION OF THE GENERAL BLOCK EXEMPTION REGULATION
BPIFRANCE POSITION

1. BPIFRANCE WELCOMES THE NEW VERSION OF THIS MODIFICATION

Bpifrance very much welcomes the initiative of the European Commission to introduce new categories of exemption under the GBER to facilitate the combination and the complementarity of national and European funding under the future InvestEU and Horizon Europe programmes. Significant updates have been made by the European Commission between the first and the second versions and all points in favour of the smooth deployment of EU funding programmes.

Among these ameliorations, Bpifrance acknowledges the fine-tuning of several definitions such as "implementing partners", "innovative enterprises" and categories of RDI projects (fundamental research, industrial research and experimental development). The new definitions will ease the deployment of key European policies such as InvestEU and Horizon Europe.

In respect of InvestEU, Bpifrance recognises the work achieved on articles 56e. Among the changes made by the European Commission, Bpifrance would like to highlight positively these ones:
- Its paragraph 1 has been duly simplified;
- The threshold under paragraph 9(a) will make it possible to provide the necessary and appropriate support for targeted SMEs and small mid-caps, and the significant simplification brought to paragraph 9(b) is more than welcome;
- The extension of the exemption applicable to aids for climate and environmental protection stated in the paragraph 7, as well as applicable thresholds, will support the financing of the energy and ecological transition which is a key priority of the next programming period.

Finally, Bpifrance shares the ambitious objective to have this revision entered into force as soon as the new programmes are launched since it is a condition to ensure a successful deployment from the very beginning.

2. BPIFRANCE COMMENTS

In line with the updates made, Bpifrance esteems that additional final adjustments could be performed to ensure the best possible implementation of the EU funding programmes and their best use by the implementing partners and financial intermediaries.

- **Definitions (Article 2) and Scope**

Bpifrance would like the definitions to be fully consistent with those set out in the InvestEU regulation and its implementing acts in order to ensure an effective implementation. The last alignment to be made relies on the definition of small mid-caps (article 2, §178), which adds constraints in terms of turnover and annual balance sheet that should be avoided since they bring legal uncertainty without being justified in the light of the objective of preserving a fair competition within the EU.

For the stake of clarity, Bpifrance would also like to highlight that any operation at market terms under InvestEU should not be considered as a State Aid and would then fall outside the scope of this Regulation.

- **Aid for research, development, innovation and digitalisation (Article 56e, §8)**

Bpifrance welcomes the deletion requested in the first consultation of the exclusion of experimental development projects conducted by large companies. On the other hand, aids for process or organisational innovation, innovation advisory services and innovation support services, and digitisation for SMEs should be extended to small mid-caps for alignment purposes with the InvestEU regulation.

- **Financing for SMEs or small mid-caps (Article 56e, §9)**

As stated before, the € 15m threshold for the beneficiaries referred to in paragraph 9(a) will be high enough to bring them an appropriate support, although SMEs for cultural purposes and activities set out in Article 53(2) should be reintegrated especially in a post-covid context.

However, the single threshold applicable to other beneficiaries in paragraph 9(b) remains too low. To illustrate, loans over € 2m accounted for half of Bpifrance's growth loans in terms of amount committed in 2019, most of which can go up to € 5m, and practice shows under the "Green loan" programme helping SMEs and small mid-caps to go greener, that the most significant investment programs, and therefore the highest loan amounts, generate the most energy savings.

Moreover, in line with tickets provided by the European Innovation Council Fund to innovative businesses, the € 15m threshold should be made applicable to any equity operation to give implementing partners the means to support the scale up of businesses as well as the objective to build stronger value chains within the EU.

- **Conditions for aid involved in commercially-driven financial products (Article 56f)**

The provision on the selection of financial intermediaries in paragraph 1 should be further clarified to ensure that the procedures for selecting commercial financial intermediaries are the ones approved by the Commission when carrying out the pillar assessment.

Moreover, the explanatory note mentions that "the Commission has simplified the conditions included in Article 56f to facilitate intermediated, commercially-driven debt products implemented under InvestEU". However, paragraph 2 can be understood in a broader sense to cover all financial products, including equity. In that case, while the obligation to retain 20% of risk exposure is usual for debt operations, it does not meet market practice for equity operations. In accordance with Article 21, a 10% minimum requirement of all investments made by private investors could be assessed at the level of the financial intermediary or the underlying project when it is early stage. This requirement could go up to 30% for later stage projects.

- **Undertakings in difficulty**

The current guidelines on State aid for rescuing and restructuring undertakings in difficulty (2014/C 249/01) are operationally unsuitable. The main limitations to the current scheme are the following:

- An extremely short financing maturity (six months for rescue aids and 18 months for temporary restructuring aids), putting them at risk of default during their business recovery;
- Excessively high interest rates for loans which worsen the company's financial difficulties;
- For aid outside of the scope of the above provisions, the ability to notify on a case-by-case basis that would make it impossible to quickly finance these enterprises.

In view of these observations, the exemption should apply to some undertakings in difficulty without notification on a case-by-case basis. This extension could apply where at least one of the following two criteria is met: i) undertakings in difficulty with a positive operating result over the last financial year, ii) young innovative companies of less than 8 years[1].

- **Financial products under the Member State Compartment**

Bpifrance welcomes the application of new exemptions both to the "EU" and "Member State" compartments. This will facilitate the combination that the EU has been promoting since 2007 of structural funds with centrally-managed instruments. However, it seems from the proposal that the constraint that hindered the first attempts might remain: national actors would still need to comply with several sets of rules (at least InvestEU regulation and GBER, and CPR to some extent).

It is key for the effective deployment of the MS compartment that it presents the clear advantage of applying a single set of rules (InvestEU regulation) to the whole combined instrument. This should apply to the ESIF component as well as any voluntary co-financing from managing authorities or implementing partners. This would clearly encourage managing authorities to allocate resources to the MS compartment to finance risky projects with larger tickets than it could be done with ESIF resources managed under CPR.

To that end, Bpifrance points out that:

- Within the current framework, structural funds allocated to an off-the-shelf product with no other condition than geographical allocation and implemented by the EIB Group or an IFI would not be considered as national resources; they would qualify as such in the event of greater specifications and/or if they are implemented by a NPBI. Based on article 38 of the CPR and the State aid guidelines on financial instruments under ESIF for the 2014-2020 programming period, it should be recognised, regardless the implementing partner involved, that contributions from ESIF are not imputable to the State where the allocation is only geographical and therefore do not constitute state aid.
- More broadly, it would be worthful to clarify that, in the same way they are typically regarded as national since they are locally management, ESIF resources which would be allocated to InvestEU and consequently managed under central rules and governance (same as the one applied to EU compartment) should be considered European and therefore be exempted from state aid rules, notwithstanding the conditions of use required in the contribution and guarantee agreements as well as the implementation by a NPBI. The contrary could disincentivize managing authorities to contribute to the MS compartment.

- **Aid involved in co-funded research and development projects (Article 25c)**

Bpifrance welcomes the inclusion of European institutional partnerships based on article 185 and 187 of the Treaty in the new category targeting aids involved in co-funded projects. Unfortunately, this amendment would not allow the inclusion of Eurostars projects as it stands since the minimum level of funding provided by Horizon Europe is set at 30% whilst the envisaged projects top-up for Eurostars 3 would be set at 28%. Hence the minimum requirement to be exempted should be harmonised at 25% for all types of research rather than 30%. It is key to treat equally co-funded projects as well as European partnerships since they are equally co-funded and have a clear supranational dimension (36 Eurostars members).

[1] The exemption from the scheme for undertakings in difficulty which have been in existence for less than three years, provided for in Article 2 of the GBER, is insufficient and out of step with the period needed for an innovative start-up to develop a stable and sustainable business model.