

**REGIO Communities of Practitioners' contribution on
the European Commission' Public Consultation on the Future of GBER
“Targeted review of the General Block Exemption Regulation (State aid):
extended scope for national funds to be combined with certain Union
programmes (2nd consultation)”**

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The [DG REGIO Communities of Practitioners](#) are informal or formal groups of Member States' practitioners who focus on finding solutions on specific issues of problems linked to the implementation of the programmes and project funded under the ERDF and/or the Cohesion Fund. The DG REGIO Policy officer for this project is Bruno Mola (Bruno.mola@ec.europa.eu).

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Introduction

Within the scope of the REGIO Communities of Practitioners, in order to make our debates and exchanges more effective and to have a greater impact on our territories, both at a national and local level, we would like to support the European Commission with some inputs for the “Targeted review of the General Block Exemption Regulation (State aid): extended scope for national funds to be combined with certain Union programmes (2nd consultation)”.

This note is the outcome of various discussions carried out during the months of June and July 2020 (all the details can be found [here](#)) and reflects our direct experience with the implementation of European funds and State aid issues.

Some general considerations to the draft

The repeated reference in the text to rules in certain areas such as InvestEU, the last draft is of 29.05.2020 and projects of Common European Interest which have not been approved yet, and therefore they are not in force and even unknown the last drafts by many people. In relation to this fact, it should be pointed out that the comments that might be made in these areas will be made in a context of legal uncertainty and in any case they must be understood as provisional.

As regards the transparency and publicity requirements, although some of the problems have been clarified, the proposal still leaves some legal gaps that should be raised and resolved. For example, it is unclear how to calculate the aid element in relation to when quasi-capital, for example, in article 16.5 in relation to the urban development fund.

Some Inconsistencies and contradictions that currently exist between the State aid and ESI Funds (ESIF) regulations persist in this draft. Some examples:

- Article 1.2 a) In relation to **aid schemes whose budget exceeds 150 million euros** and the possibility that its exemption is pending of an evaluation plan. Especially with regard to the legal uncertainty that this entails. Would it not be appropriate to make an exception when there is co-financing with European funds since all of them, especially the ESIF, contemplate an evaluation policy?

Inclusion of **indirect costs** expressly in all those personnel expenses that are considered eligible.

- **A discrimination is established on the basis of the funds that finance the aid.**

According to this draft, aid of the same configuration and conditions may be financed through InvestEU funds under the GBER, but If the funding came from national funds or ESI funds, these grants could not be granted on pain of becoming an illegal and incompatible aid.

It is necessary to have a consolidated text of the GBER once approved the proposed amendments in this draft.

Article 12 Monitoring of the aid

1. In order to allow the Commission to control aid exempted from notification under this Regulation, the Member States, or, *in the case of aid granted to European Territorial Cooperation projects referred to in Article 20, the Member State in which the managing authority is established*, shall keep detailed records of the information and supporting documentation necessary to determine compliance with all the conditions established in this Regulation. These records will be kept for ten years from the date of granting the ad hoc aid or the last aid under the scheme. This article shall not apply in relation to aid granted to European Territorial Cooperation projects referred to in article 20 bis.

Comments: This article continues to demand the custody of the documentation related to the aid for 10 years from the granting of the same. On the contrary, the ERDF regulations establish a period of three years from the certification of the operation to the European Commission. This creates unprotection for the beneficiary and the granting authority that does not know how long it has to keep all the documentation associated with the aid file.

On the other hand, why does this requirement not apply to Territorial Cooperation projects? Could it be asked that for aid co-financed with the ERDF, it should not apply either, since a different document custody period (3 years) is already required?

1. European Territorial Cooperation (ETC) projects

Indirect costs

In order to encourage a wider participation of enterprises in ETC projects, Regulation (EU) No 651/2014 should apply both to undertakings receiving direct aid and to undertakings benefiting from indirect aid.

We would therefore like to ask the Commission to clarify the application of Article 20, stating that it also applies to indirect State aid with identifiable eligible costs.

In relation to this, we would also like to request that indirect State aid treated under Article 20 should follow the same simplification measures with reporting and monitoring obligations as those provided for in Article 20a for aid of a limited amount. We ask the Commission to clarify that Article 20a also applies to the granting of indirect aid.

Monitoring

In order to make the proposed amendment of Article 20 effective, Aid granted under Article 20a should not fall under the reporting (Article 11) and monitoring (Article 12) requirements of the GBER and should not entail any information requirements to third parties.

To reduce administrative burden, please include under Article 5, paragraph 2, the category of aid granted under Article 20a.

2. RDI projects

Article 6(5) Letter j

Aid for research and development projects that have been awarded a "Seal of Excellence", Marie Skłodowska-Curie and ERC proof-of-concept actions that have been awarded a "Seal of Excellence"

", aid included in co-financed projects and co-financed team building actions, if the relevant conditions established in articles 25 bis, 25 ter, 25 quater or 25 quinquies are met;

Comments:

We understand that with this definition, aid could be given to projects presented and evaluated in European calls even prior to the publication of the aid line with which these aids are used. The incentive effect is understood from the first presentation of the proposal, in this case in the EC instrument.

The consideration of the incentive effect at the time of submission to the call for H2020 or Horizon Europe is not mentioned in the targeted review of the GBER submitted to public consultation.

Although that issue has been developed in other working documents, in order to eliminate any legal uncertainty, we propose to include an specific mention to establish: the date that determines compliance with the incentive effect for those research and development projects (that have received a quality seal "Seal of Excellence" within the framework of Horizon 2020 or the Horizon Europe program,) must be the date when that projects were submitted to the european call for proposal and not that the submission date to the regional or national call for proposal.

In addition to the doubt about the incentive effect that this new version of the regulation does not resolve, the fact that the change in the SME Instrument, now replaced by the new pilot the EIC (EIC Accelerator Pilot), is not included either, causes uncertainties for the "rescue" of these projects under the ROPs.

The new instrument includes, among other changes, a double stamp mechanism and differentiates the type of financing according to the TRL of the project: subsidy or blended finance (grant + equity).

The "rescues" of projects with a seal of excellence from the previous SME Instrument can coexist with the new ones from the EIC pilot, so all these issues should be clarified. The Commission working note, which until now, with its limitations, clearly served as a guide, is no longer applicable to the new pilot that will join Horizon Europe.

The correspondences between the types of projects included in the GBER and the TRL or technological readiness levels, terminology used both in the H2020 Program or Horizon Europe and in the business world.

It is contradictory that the Commission states that TRL 9 level is considered to go beyond the scope of the definition of experimental development under the GBER, whereas in HORIZON 2020 TRL 9 is included.

We recommend to homogenize and clarify the definitions of fundamental research, industrial research, experimental development and innovation, and to make the table of equivalence among the TRLs.

In general, we would ask for a better alignment of terminology

In general, we ask for a better alignment of terminology and definitions in order to avoid regulatory uncertainties about activities and projects that may or may not be supported.

In particular, recital 8 correctly refers to Horizon's terminology by mentioning 'research and innovation actions' and 'innovation actions'. The recital also specifies that "research and innovation actions", as defined in the Horizon Framework Programme, will normally correspond to fundamental research and industrial research as defined in the General Regulation, while the "innovation actions" supported under the Horizon Framework Programme will normally correspond to the definition of experimental development activities under the GBER.

Article 25a uses a third terminology that refers to 'research and development projects and feasibility studies'.

We, therefore, ask for a better alignment of the terminology used in various parts of the Regulation, possibly using the same terminology adopted for the Horizon Framework Programme also for Article 25a.

Clarify the scope of Article 25a

Recital 8 refers to all actions under the Horizon Framework Programme, in general, without distinguishing those accessible to SMEs, while Article 25a limits its scope to SMEs, which – under Horizon – can only access certain actions and not others.

Therefore, we request a better clarification in the recital of which are the target enterprises or to specify in Article 25a which actions under Horizon can be adopted and are accessible to SMEs.

Product innovation

The RGEC only considers innovation in process and organization, so the remaining alternative is to go to the de minimis regulation. It is true that product innovation is the one that can most distort competition, but it could be considered, with limitations similar to those of de minimis (eg max. 100,000 / 200,000), but specifically in the RGEC.

This inclusion:

- a) it would increase its coherence:
 - by not leaving any part of the R + D + i value chain without considering (as H2020 does).
 - It would avoid financing non- eligible activities under the GBER, since sometimes the separation between innovation in process (and even organization) is very difficult
- b) It would allow having a specific support mechanism for product innovation that, in a controlled manner, could foster innovation in SMEs and improve their competitiveness.

3. Digital Europe Programme

Digitalization and Innovation

Another issue considered important to address within the complementarity between Union policies is the possibility of recognizing new actors such as the Digital Innovation Hubs, in the framework of Digitization and innovation, as the Commission recognizes a key role for them for digital transformation and the commitment to innovation of SMEs. They aspire to be "one-stop shops" so that in the future they may occupy an important place and, as such, they should also be considered as special actors in the State aid regulations.

4. Financial products supported by Invest EU Fund

General consideration – measures which do not constitute State aid

It is known that the GBER can only declare the compatibility of measures which already constitute State aid within Article 107.1 TFEU. However, it cannot define what constitutes or does not constitute State aid.

It follows that the fact that the GBER provides support for certain infrastructures and activities does not mean that they always fall within the scope of State aid.

We would therefore like the Commission to clarify that support for certain infrastructures and activities cannot always and automatically be attributed to State aid, simply because it is provided for in the GBER.

To this end, it is proposed that the Commission insert a general recital to clarify that the entire GBER applies without prejudice to the fact that support for certain infrastructures and activities referred to therein may not constitute State aid within the meaning of Article 107.1 TFEU.

It is also requested that these "recitals" be included in the consolidated version of the text of Reg. 651/2014.

General consideration and advances payment

The InvestEU Program is complementary with respect to the European Structural and Investment Funds: “In order to facilitate the deployment of certain Funds under shared management [European Regional Development Fund (ERDF), European Social Fund + (ESF +), Cohesion Fund , European Maritime and Fisheries Fund (EMFF) and European Agricultural Fund for Rural Development (EAFRD)] through financial products, the Member States will have the possibility of using the InvestEU Program ”. This is an important simplification compared to the current situation, since a single set of rules will apply in this case.

We understand that the objective of the proposal is to establish a single instrument for an EU budget guarantee intended to support financing and investment operations by the implementing partners.

So, could we finance advances payment (associate the aid and the financial instrument) of an aid for an R + D + i project co-financed with ERDF through this instrument? Is the door open to guarantee the entire operation? Would the beneficiaries be paid the entire aid or a good part of it from the moment of the granting of the aid? This is of particular concern to us because from the time we grant the aid for an R+ D+ i project to the time it is paid (once justified and reviewed) it can take years and companies need liquidity.

Deggendorf clause

It is not reasonable to exempt these projects from compliance with the Deggendorf jurisprudence.

Undertaking in difficulty

Regarding “aid to financial intermediaries under section 16 of Chapter III”, does the Commission really think that the effectiveness of the aid is not lost if the financial intermediary, especially the so-called “commercial” one, is in difficulty?

As the Commission has repeatedly insisted, the control of State aid is a means of preserving the principle of cohesion and the principle of competition on an equal footing in the internal market. It does not seem that the solution to the problems lies in adopting discriminatory permissiveness, but in carefully analyzing the existing possibilities and adopting those that, although flexible, apply to everyone.

Aid involved in financial products supported by the Invest EU Fund

Article 56e (9) (a) (v) as a condition for granting State aid to SMEs or small mid-caps located in assisted areas, states that funding shall not be used for the relocation (transfer) of activities as defined in Article 2 (61a). In the light of competition rules, it seems reasonable to require that this condition is also applicable to entities mentioned in points/items (i) (ii) (iii) (iv).

Notwithstanding the foregoing, it should be noted that micro-enterprises are listed twice in the catalog of potential aid beneficiaries: in item (i) and in item (v) - if we apply SME definitions. At each of these points, the conditions for support are different.

Article 56e, paragraph 9, SMEs and medium-caps

- **Letter a, point i)**

In this respect, it should be noted that the proposed amendment to Article 56e, paragraph 9, letter a), point i) limits – except for assisted areas – the scope of support to microenterprises only (while extending it to all SMEs under the special conditions laid down in following points ii, iii, iv and vi).

In view of SMEs difficulty to access credit in all territories, as well as considering the high number of small and medium-sized enterprises that characterises the European economy, it would seem appropriate to extend the GBER exemption also to all SMEs or, alternatively, at least to all small enterprises, regardless of the area in which they are located (assisted or unassisted).

Indeed, for example, it may appear contradictory that “innovative medium-caps” (technically, large enterprises) are eligible to receive aid under the GBER, even outside assisted areas – art 56e,

paragraph 9, a), v) – whereas small enterprises - which are likely to have more difficulty accessing sourcing of finance, in the same territories, are not.

We would ask therefore the Commission to extend the scope of Article 56e, par. 9 to all SMEs or, alternatively, at least to all small enterprises, adding small enterprises in letter a) point (i).

- **Letter b)**

The European Commission is asked to confirm that all SMEs and medium-caps not included in letter a) are the target companies.

Moreover, it would be better to clarify whether the thresholds of EUR 15 million and EUR 2 million relate only to InvestEU financial support or to total financial support, including any other national public resources.

State aid schemes intended to remedy certain natural disasters

They should be treated separately from the rest, perhaps in a separate letter.

These events are caused by force majeure, a legal concept that is part of the *acquis Communautaire* and that serves as the basis for article 107 2 b) TFEU. It is emphasized once again that its nature is very different from that of the other exceptions contemplated in this article and as such must be distinguished in the regulation.

In addition, in order to enable quick (without the necessity of waiting for the Commission decision) response to a crisis both in the current situation and in the future, it is fairly justified that in case of an epidemic/pandemic it was permissible to grant aid to make good the damage caused by certain natural disasters in accordance with Art. 50 of the GBER. Therefore, an “epidemic or pandemic” should be added to the list of natural disasters, contained in Art. 50 (1) of GBER.