

Comments of the Czech Republic on the 2nd draft amendment of the Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

1. Article 2, points 84, 85 and 86 - in the first round there was proposal of change of above mentioned Article, which adds references of TRL to each of three research categories. We appreciate, that Commission abandoned from this change and TRL codes are no longer in these definitions. However we also pointed out, that if such matter of R&D is already the subject of change because of connection to Horizon 2020 (or Horizon Europe), the definitions of research categories needs to be changed anyway

We suggested to add a definition of applied research, in line with the Framework for State aid for research and development and innovation and keep the aid intensity and notification thresholds (see Art. 4) for applied research in the ceilings for industrial research. In practice there is extensive problem to distinguish between industrial research and experimental development and the line can be different in different fields. We don't see any reason, why these two categories should remain separated for the purposes of aid intensity, allocation of eligible costs and for determination according to Art. 4.

In our opinion this unification under definition of applied research shall save the time and ease administration on both sides (public authorities and beneficiaries) and bring no risk in the form of misusing the aid.

2. Article 2, points 138 and 138 a

We agree with adding these definitions (NGN) however, we consider appropriate to incorporate these definitions (NGN) into the article 14 and 52 GBER.

Do we understand correctly, it means that the NGA is only network which providing 1 Gbps upload and download speeds not less? We thought that the NGA limit is 30 Mbit/s and more.

3. Article 2, points 178

The definition of small mid-cap companies differs from the one that is used in new ERDF regulation proposal, which links to definition in Art. 2 of the Regulation 2015/1017. We would like to change the definition in GBER amendment proposal or to explain why this term is not unified across the EU law.

In our opinion the definition shall be the same as stated in ERDF (or regulation 2015/1017), because such condition is much easier to evaluate (deals only with employees). But since this definition is easier, it requires further clarification (at least in recitals of amended regulation), that small mid-cap company means only one legal entity and not group of more subjects such

as single economy unit or connections used in SME definition. Also there should be at least one link of this definition to Annex 1 of the GBER, namely its Art. 5 (staff headcount) for another clarification, meaning that one employee equals one annual work unit.

If Commission insists on leaving the definition with links to another articles of Annex 1 of the GBER (namely 3 to 5), the discrepancies in this suggested point 178 should at least be fixed. At first, when the Art. 3 shall be used and linked and partner enterprises shall be taken into consideration, we do not understand why also Art. 6 for establishing the data is not included in the link as well. Secondly, there is contradiction between first and second part of the definition. While first part links to whole Art. 3, the second part links only to its paragraph 3. So firstly, we take into consideration also partner enterprises but at the end the definition contains only linked enterprises. Thus we propose, that the link in this definition should be „...Art. 3 par. 3 and Art. 4 to 6 Annex 1,..“, but again only if the Commission will not agree with the ERDF definition, which we prefer. We remind that the first draft amendment worked only with autonomous enterprises, which is for us more acceptable.

4. Taken into consideration the previous point, which basically deals with specific group of large enterprises (close to SME's), we don't really see the point of making such difference in the group of large enterprises and why relevant suggested Articles are not enabled for all of them. Firstly, another classification leads to another administrative work based on another assessing of such conditions. But mainly the new ERDF regulation proposal enables financial instruments (same as InvestEU does) for all sizes of undertakings, and there is no legitimate reason, why GBER should be stricter or discrepant with this ESIF legislature.

5. **Point 8 - Draft Article 9, par. 1, letter c)** – there is a need to clarify how to apply a new obligation to ensure the publication of information on each individual aid award exceeding EUR 60.000 for beneficiaries active in primary agricultural production. Is this obligation relevant for all beneficiaries active in primary agricultural production or is relevant only for aid awarded directly in primary agricultural production area (e.g. research organisation which is engaged also in primary agriculture production will receive aid for training in its activities outside of primary agriculture)? In the case of stricter interpretation, there is a risk of unduly increasing of administrative burden.

6. **Article 25c** quotes Co-funded actions but does not mention Co-funded partnerships. A clear reference to the Co-funded partnerships would be very helpful as only institutionalized partnerships are clearly quoted.

7. **Article 25d, par. 1** quotes that the Teaming action is involving at least 2 Member States. This information is redundant and incorrect. In the first place, the relevant conditions, who is eligible, are the subject to be specified by work programme. Secondly, the Teaming action is

focused on Acceding countries, so the beneficiaries can be not only from EU Member States, but also from Associated Countries. Furthermore Teaming does not limit the partner institution to be only from EU Member States either. The partner institution should be a university or a research organisation with an international reputation in research and innovation excellence (without the specification of its location). Therefore we suggest to keep the paragraph simple and remove the information about the involvement at least 2 Member States: „Aid provided to ~~co-funded~~ Teaming actions, ~~involving at least 2 Member States and~~ evaluated, ranked and selected ...“.

8. Seal of Excellence for Teaming actions – Art. 25d, par. 1 and 2 (and Art. 25a)

The amending Regulation covers most of the actions where, at the time being, a Seal of Excellence quality label is issued. Unfortunately, one action is missing, and it is Teaming.

We believe it is not intentional. In our opinion the new article 25a cannot be used for Teaming Seal of Excellence projects, although the name of the article indicates it. The limitations are focused on SMEs (applicant organisation in Teaming is a national/regional authority or a research funding agency or a university or a research organisation), the eligible activities (research and development project or feasibility study, while Teaming projects are not research projects) or maximum aid amount (2,5 mil. EUR, while H2020 limitation for Teaming Phase 2 is 15 mil. EUR).

The new suggested paragraph 25d does not mention Seal of Excellence, hence it seems it cannot be used for Seal of Excellence Teaming projects with current wording. Because the projects awarded with Seal of Excellence in MSCA or ERC P-o-C are clearly written in article 25b, we suggest to adapt the article 25d likewise. Our suggestion is hereinafter.

Draft Article 25d

Aid for Teaming actions

1. Aid provided to ~~co-funded~~ Teaming actions **or Teaming actions awarded a Seal of Excellence quality label**, ~~involving at least 2 Member States and~~ evaluated, ranked and selected by independent experts following transnational calls under the Horizon 2020 or the Horizon Europe programme rules, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible activities of the ~~co-funded~~ Teaming action shall be those defined as eligible under the Horizon 2020 or Horizon Europe programme rules, excluding, where applicable, activities going beyond experimental development activities.

Also, we recommend to adjust the name of the article 25a so it involves reference to SMEs.

9. Art. 56e par. 2 letter b) point i) – first bullet

Providing of aid is conditioned with criterium that the project aims to connect socio-economic drivers as defined in article 8.3.(a) of the Regulation ... that are public or private undertakings entrusted with the operation of services of general economic interest in the areas of education, social services including health, public administration, transport, postal services, culture, as referred to in Article 106(2) of the Treaty and in line with the Commission Decision 2012/21/EU or subsequent legal acts replacing said decision.

We propose to update the definition that socio-economic drivers could be also entities which are not providing services of general economic interest but carry out services of general non-economic interest. E.g. public universities carry out non-economic activities in area of public education and they are not entrusted with operation of SGEI according to Decision 2012/21/EU. It applies also for public administration bodies which carry out public power/administration. The same conclusion results from answer No 3 of Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest (SWD (2013) 53 final/2). In answer No 3 there are two services recognized i) social service of general interest (SSGI) and ii) services of general economic interest (SGEI).

Actual wording of Article 56e par. 2 letter b) point i) – first bullet makes a presumption the connection of socio-economic drivers which are not entrusted according to Decision 2012/21/EU does not fulfil (cumulative) condition of Article 56e par. 2 letter b) point i).

10. Article 56e par. 2 letter b) point iv) – first bullet

Also this provision is conditioned with criterium of providing of service of general economic interest in relevant areas in accordance with Decision 2012/21/EU (see the previous proposal).

We propose to clarify this criterium and enable connection of socio-economic drivers providing non-economic activities or SGEI.

11. Section 16: The newly proposed category of support is based on the European Commission's intention to create a “single investment support mechanism” for the InvestEU Program, one of the pillars of which is the InvestEU Fund providing EU guarantees. The accompanying explanation for the GBER revised proposal states that 'The Commission intends to provide guidance on typical InvestEU Fund support scenarios as regards the classification of aid and, more specifically, the imputability of public resources provided by Member States or national promotional banks (...). These guidelines shall address, inter alia, the role, selection

and independence of the Investment Manager, the governance structure and other relevant elements. "However, for the purposes of commenting on the draft revision, this data is not available, although crucial to understand the principles of the InvestEU Fund, its levels and thus the submission of relevant comments. There is no clear answer to the fundamental question, namely, what is meant by the aid contained in the financial products supported by the InvestEU Fund.

12. In view of all the above, there are no clear grounds for proposing the classification of the alleged aid contained in financial products supported by the InvestEU Fund to the GBER. The support related to the implementation of the InvestEU Program is so specific that it would be preferable to lay down the conditions for exemption from notification under Article 108 (3) by a separate legal regulation.