

HT.4691 – targeted revision of the General Block Exemption Regulation
Estonia's comments on the first Draft of the Commission Regulation amending
Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the
internal market on application of Articles 107 and 108 of the Treaty

Estonia welcomes the European Commission proposal to add new state aid categories to the Commission Regulation (EU) No 651/2014 (GBER).

Estonia also welcomes the amendments addressing technical issues, especially the higher notification thresholds for investment and operating aid for culture and heritage conservation (amendment to the GBER article 4) and changes to the GBER article 7 concerning the possibility to calculate the amount of eligible costs in compliance with the simplified cost option. Estonia also supports the changes in the GBER Article 14(7) limiting the rule of calculation of the eligible costs in case of a fundamental change in the production process for large undertakings only.

Please find below our comments and suggestions regarding the particular articles of the draft:

1. New Article 56b “Investment aid to maritime ports”.

We would like the Commission to explain what is the reason for setting in the State aid regulation the limit for the duration of any concession or other entrustment for the rental or operation of the infrastructure to a third party. In case the limitation of duration of the concession is considered to be justified, we propose to extend it to 45 years.

Estonia is in the position that proposed time limit of 30 years is too short considering the specificities of the sector of maritime ports. To our knowledge, so called *landlord* type of ports have longer concessions as it is preferred by the freight operators from commercial point of view. We would also like to draw the Commission's attention to the fact that such a time limit will reduce the competitiveness of the ports of the Member States of the European Union compared to third country ports, where there is no such time limit.

In this regard we suggest to extend the duration of concession to **45** years. Such a limitation should only apply to concession agreements concluded after amendments of the GBER come into force. Estonia is of the opinion that the limitation should not be retroactive and this should be, in the purpose of legal clarity, explicitly set out in the Regulation.

We support proposed notification thresholds for new exempted aid categories (amendment to the GBER Article 4) and maximum aid intensities in relation to maximum eligible costs proposed for the same categories. At the same time we consider it necessary to emphasize that the maximum aid intensities should not be lowered.

We also kindly ask the Commission to clarify whether small ports for reception of small ships (under 24 meters) fall under the GBER article 55 as aid for multifunctional recreational infrastructures or new Articles 56b and 56c shall be applied to them. *According to Estonian Port's Act subsection 2(18) a small-craft harbour is a port or a part of a port where port services are provided to water craft with an overall length of less than 24 metres.*

2. New Article 56a “Investment aid for regional airports”.

We kindly ask EC the Commission to confirm that investments to airports for hobby purposes do not fall under the GBER new Article 56a.

The airport for a hobby purpose is an airdrome, which does not include a passenger or a cargo airport services (or its creation). It is an aerodrome for tourism - 2/3 of users visit the aerodrome to start and end parachute trips, but it is also used for air shows and by hobby pilots (like skydiving, sail planes, gliders flying).

3. Draft amendment to the GBER Article 1 “Scope”.

We would like the Commission to explain the reasons for excluding from paragraph 3 the text in the end of the paragraph which starts from the words “When an undertaking is active in the excluded sectors.” In our opinion this is an important provision and it should be retained.

4. Draft amendments to the GBER Article 5 “Transparency of aid”.

Estonia is in favour of the proposal to amend Article 5 of GBER and to extend the categories of aid that shall be considered as transparent.

In that regard, we invite the Commission to clarify the wording of the new point (k) as in the same sentence different notions „lease“ and „rent“ are used.

5. Draft amendments to the GBER Article 12 “Monitoring”.

Estonia in general supports EC proposal to amend Article 12 of GBER and to set out that in the case of schemes under which fiscal aid is granted automatically based on tax declarations of the beneficiaries, *ex ante* control could be replaced with *ex post* control on a sample basis.

We suggest that *ex ante* control would also be applicable to cases where there is no obligation to submit a tax declaration.

Concerning the control mechanism for a regular verification once per fiscal year, we propose to carry out the checks every two or three fiscal years. The obligation to carry out checks every fiscal year will significantly increase the administrative burden for the Member States, what is the opposite of the purpose of the draft regulation.

We also have further proposals to make additional amendments in the GBER:

6. Estonia proposes to consider making additional amendment concerning the aid for research infrastructures and to increase the rate of use the infrastructure for economic activity of public research institutions from 20% to 50%.

Since the year 2014 the public sector infrastructure investments fall under State aid rules, if the infrastructure will be later used for the purposes of research by the private companies or rented to private companies and the corresponding economic activity accounts for more than 20% of the annual budget. In that case, the aid intensity from public funds for the part exceeding 20% can be only 50 % of eligible costs.

We would like to draw the Commission’s attention to few problems encountered in applying Article 26, which need to be addressed:

- 1) interpretation of the article has brought many practical problems concerning the definition of economic activity and distinguishing between economic and non-

economic activities, which have increased significantly the administrative burden of beneficiaries and aid grantors.

- 2) the current share of 20% is too low and negatively effects the cooperation of research institutions and enterprises.

We propose to increase research institutions' share of economic activity from 20% to 50%. In this case, the aid intensity of 50% will be justified.

In Estonia there is no business interest in establishing commercial research infrastructures and therefore the 20% economic activity share hinders the development of research-intensive economy and also the optimal use of research infrastructure. According to State aid rules public research institutions have to add 50% of self-financing to state financing of infrastructure. As the co-financing capacity of research and development institutions is low, the high self-financing rate inhibits significantly the development of research infrastructures and the possibility to cooperate with enterprises.

The resulting situation is contrary to the European Union strategic and long-term objective to increase the European Union's competitiveness in science and business cooperation. Opening of public institutions' research infrastructures to business cooperation and services have for many years been one of the important topics that have been addressed by the Commission to Estonia in the context of country specific recommendations.

7. Estonia suggests to make the following amendments for legal clarity:

a. GBER Article 2 - to add the definition of „shipbuilding sector“

According to Article 13 the Section of regional aid is not applied to aid which favours activities in the shipbuilding sector. For legal clarity we propose to define “shipbuilding sector” in article 2 of the GBER.

b. GBER Article 58(1) - to replace the reference to Article 9 by the reference to Article 11

In our opinion the current reference to the Article 9 is not correct as Article 9 includes publication obligations which will come in force from 1 July 2016. The reference should be to Article 11 (a).

8. **Finally, we would ask the Commission to consider unifying conditions of the GBER Article 53(6) (aid for culture and heritage conservation) and Article 55(10) (aid for sport and multifunctional recreational infrastructures) and to allow to the operator of the infrastructure to keep a reasonable profit also in case of Article 55 (10). We also suggest stipulating explicitly this possibility in Article 56(6)(investment aid for local infrastructures).**

We have also comments on the **Estonian translation** (formulated in Estonian):

- 1) **eelnõu tekstis asendada läbivalt sõna „rahastamiskõlblik“ (i.k. *eligible*) sõnaga „abikõlblik“** vastavas käändes, sest määruses on kasutatud terminit „abikõlblik“;
- 2) **eelnõu artiklite pealkirjades asendada läbivalt sõna „investeerimisabi“ (i.k. *investment aid*) tekstiga „investeeringuteks ettenähtud abi“**, sest määruse artiklite pealkirjades on kasutatud terminit „investeeringuteks ettenähtud abi“;

- 3) **artikli 2 punktis 42** asendada sõna „amortisatsiooni“ (i.k *depreciation charges*) sõnaga „amortisatsioonitasusid“, sest selline sõnastus on määruses seni kasutusel olnud;
- 4) **artikli 2 punktis 55** lisada õigusselguse mõttes sõna „määratletud“ järele tekst „käesoleva artikli“;
- 5) **artikli 2 punktis 149** asendada tekst „võib sõita“ (i.k *capable*) tekstiga „on võimeline sõitma“, sest „võib sõita“ võib kajastada ka üksnes regulatiivseid piiranguid.
- 6) **artikli 2 punktist 151** jätta välja lühend „jne“;
- 7) **artikli 6 lõike 5 alapunktis a** asendada sõna „linnaarenguabi“ (i.k *urban development aid*) sõnaga „linnaarendusabi“, sest selline sõnastus on määruses seni kasutusel olnud;
- 8) **artikli 56a lõike 2** - soovitame kasutada tõlkes komisjoni teatise „Suunised lennujaamadele ja – ettevõtjatele riigiabi kohta“ punkti 85 sõnastust ;
- 9) **artikli 56a lõike 5 teises lauses** ei ole tõlgitud sõna „expected“ (e.k *eeldatavalt*); **artikli 56a lõikes 7** ei ole tõlgitud sõna „expected“ (e.k *eeldatavalt*) ;
- 10) **artikli 56a lõike 11 punktis b** asendada sõna „kolm“ tekstiga „kuni üks“, tegemist on kirjaveaga;
- 11) **artikli 56a lõikes 12** asendada tekstiosa „kaugetes piirkondades“ (i.k *remote regions*) sõnaga „äärealadel“, sest seda terminit kasutatakse läbivalt määruse tekstis;
- 12) **artikkel 56 b lõike 2 punkt b** palume tõlkida „sealhulgas süvendus ja välja arvatud hooldussüvendus“ (i.k „*including dredging and **excluding** maintenance dredging...*“.

Tallinn,
May 17, 2016