

The Hungarian authorities' position on the targeted review of the General Block Exemption Regulation proposed by the European Commission

Please find below the Hungarian authorities' comments on the consultation opened by the European Commission (**Commission**) on 3 March 2016 concerning the proposed review of *Commission Regulation (EU) N°651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (GBER)*. For your convenience, the document has been split into two sections marked by Roman numerals. The first section covers the Hungarian authorities' position regarding amendments proposed by the Commission, and the second section discusses additional amendments to the GBER proposed by the Hungarian authorities based on the experience gathered since the entry into force of the GBER.

In each section, the comments of the Hungarian authorities are shown in the order of the affected provisions of the GBER. For the affected provisions, if relevant, a specific modification proposal is added, which shows the additions proposed by the Hungarian authorities **in bold text** and the text proposed to be deleted ~~with strikethrough font~~.

I. Amendments within the scope of the targeted review

Article 1(3)

The amendment proposal appears to delete the last sentence of Article 1(3). The Hungarian authorities are unsure of the rationale behind the proposed deletion of this sentence, and, as discussed during the 24 May 2016 Advisory Committee meeting, it was likely a codification error. The provision possibly intended to be deleted by the Commission states that where an undertaking is active both in the excluded sectors and the eligible sectors, the GBER applies to aid granted in respect of the latter sectors or activities provided that the Member State ensures by appropriate means the separation of activities or distinction of costs to ensure that the activities in the excluded sectors do not benefit from the aid granted under the GBER. The Hungarian authorities are of the opinion that the separation of activities/distinction of costs is a common tool in State aid law in general, for instance in the case of the separation of economic and non-economic activities. The same rule appears in another frequently applied State aid regulation, the *de minimis* regulation (Article 1(2)). If this sentence was taken out of the GBER, the consequences would be unclear and possibly radical, considering that, in the absence of this rule, it is conceivable that undertakings pursuing activities in any excluded sector will be automatically ineligible for aid under the GBER even if the activity concerned

by the aid measure belongs to eligible sectors. The Hungarian authorities therefore request the restoring of this rule.

Art. 2 point (61a)

The Hungarian authorities would like to make a number of suggestions concerning the Commission's proposal for the definition of the 'closure of a same or similar activity'. According to the definition intended to be introduced, the notion of a closure of the same or similar activity covers partial closures resulting in substantial job losses defined as losses of at least 100 jobs in an establishment or as a job reduction in an establishment of at least 50% of the workforce. The Hungarian authorities believe the loss of 100 jobs in an establishment can hardly be considered the closure, even partial closure, of an establishment, as establishments can have very diverse sizes in terms of workforce. For instance, larger multinational companies have sizeable establishments all over the European Economic Area (EEA), and establishments with thousands of employees, and even establishments with over ten thousand employees, are not uncommon¹. For such large establishments with over a thousand employees, 100 jobs constitute a minor fraction, less than 10% of the workforce at that site, and a loss of 100 jobs at such a large establishment is insignificant and can be a result of a number of factors unrelated to closure. It would be very unfair to exclude the entire company group from regional aid due to the loss of 100 jobs at a single establishment when the proportion of the redundancy is so low compared to the size of the establishment. Consequently, whether the extent of the loss of jobs can be considered substantial depends on the size of the workforce at the establishment. The Hungarian authorities therefore believe that this figure is arbitrary and it would be more reasonable to use the percentage-based definition only, since that would take into account the size of the establishment. In fact, any nominal threshold would be artificial, especially considering that the *Guidelines on regional State aid for 2014-2020* contain no specific threshold definition for relocation. As mentioned above, the loss of jobs can also be a result of other factors, especially in the case of multinational or transnational companies, such as the improvement of technology, and companies very often are able to maintain or even improve production through the advancement of technology even though they may reduce their workforce at the same time. In such cases, the establishment would be considered closed for the purposes of the GBER but in reality it would still continue to operate. The Hungarian authorities understand that the Commission's objective is to maintain and improve the level of employment, but the rapidly changing technologies of today require less and less workforce, and at the same time the reaching of the EU2020 objectives and the enhancing or at least the maintaining of the global competitiveness of the EEA necessitates investments into the latest technology. The objective of the regional aid should be to increase the level of development of a region via investments and not to drive potential investments outside the EEA, but this rule, in the Hungarian authorities' opinion, have the latter effect.

¹ In Hungary alone, the number of employees at single establishments of large multinational automotive industry companies range from 1208 to 12,037 per establishment based on 2014 data.

It would, in the Hungarian authorities view, be more logical to use a percentage based rule. For legal certainty reasons, the Hungarian authorities would also suggest that the definition should also include the basis of the comparison. The Hungarian authorities would also like to comment that the term “workforce” is not defined by the GBER and this might cause problems when the rule is applied in practice.

The Hungarian authorities therefore propose the following amendment to the text put forward by the Commission:

Article 2 point (61a):

*‘Closure of the same or similar activity’ means full closures and also partial closures resulting in substantial job losses. For the purpose of this provision substantial job losses are defined as ~~losses of at least 100 jobs in an establishment or as a~~ job reduction in an establishment of at least 50% of the workforce **as compared to the average headcount of the establishment over the previous three calendar years and a decrease in output of the establishment of at least 50% as compared to the average output of the establishment over the previous three calendar years;***

Article 2 point (144)

The Hungarian authorities request the specific inclusion of instrument landing systems (ILS)² as part of the examples of airport infrastructure items that directly support airport services and therefore are eligible for aid. The Hungarian authorities consider ILS as essential for air travel safety, but according to the Commission’s interpretation provided through ECN, ILS is considered an infrastructure item used for economic purposes. The Hungarian authorities disagree, but if the Commission maintains its position, the Hungarian authorities believe ILS should be specifically mentioned as a facility that directly support the airport services for the purposes of Article 2 point (144).

For this reason, the Hungarian authorities request the Commission to either review its position (by declaring that ILS is not used for economic purposes and supporting it does not constitute State aid) or include ILS in the ‘airport infrastructure’ definition as follows:

Article 2 point (144):

*‘airport infrastructure’ means infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure, **instrument landing systems** and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities, such as car parks, shops and restaurants.*

² instrument landing system (ILS): A radionavigation system which provides aircraft with horizontal and vertical guidance just before and during landing and, at certain fixed points, indicates the distance to the reference point of landing (source: ITU Radio Regulations, Article 1.104, http://www.itu.int/dms_pub/itu-s/oth/02/02/S02020000244501PDFE.PDF)

Article 2 points (144)-(151)

The Hungarian authorities propose to supplement the definitions for regional airports with the notion of regional airport on the basis of *Guidelines on State aid to airports and airlines* because the Commission's proposal only indirectly includes the definition of regional airport under Article 56a (5). To make the application of the GBER more straightforward and coherent with the Guidelines, the Hungarian authorities propose the introduction of the following definition:

Article 2 point (151a):

'regional airport' means an airport with annual passenger traffic volume of up to 3 million;

Article 2 points (153)-(155)

These definitions, in the Hungarian authorities' opinion, generate a number of uncertainties. For instance, it is unclear whether the notion of a 'port' (as defined in Article 2 point (153)) only has two subcategories, inland ports and maritime ports (Article 2 points (154) and (155), respectively). The Hungarian authorities believe that this should be the case, i.e. ports that are neither inland nor maritime (e.g. lake ports; Hungary, for instance, has a large lake, Lake Balaton, which is navigable in itself for passenger ships but has no navigable access to the sea) fall outside the scope of the definition of a "port" and therefore should be handled differently for the purposes of State aid (e.g. they should be eligible for aid e.g. under regional investment aid or aid for local infrastructure, or they could be considered as having no effect on the trade between Member States and thus be exempt as a result from the application of State aid rules).

Additionally, the Hungarian authorities believe that passenger transport related infrastructure as a whole should be excluded from the definition of ports because the structure of the proposed definitions suggests that the focus of investment aid for ports is freight transportation while passenger transport should be eligible for aid under different State aid regimes, e.g. SGEI rules.

Also, ports in estuaries should be qualified as maritime ports and the relevant definition should make this clear.

Finally, in the case of inland ports, the Hungarian authorities believe that the notion of "indirect access" should be clarified because, in principle, a lot of bodies of water can have some form of theoretical access to the open sea but that access, in a lot of cases, can hardly be used by all kinds of vessels.

Consequently, the Hungarian authorities propose the following changes in the Commission's definitions:

Article 2 points (153)-(155)

(152) 'Port' means ***either a maritime port or an inland port used for the transportation of goods and excludes any other type of port and is an area of land and water made up of infrastructure and equipment for, principally, the reception of waterborne freight vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods, or the embarkation and disembarkation of passengers and any other infrastructure necessary for transport operators within the port area;***

(153) 'Maritime port' means ***a port for, principally, the reception of waterborne vessels by sea including ports located in estuaries;***

(154) 'Inland port' means ***a port other than a maritime port, with indirect access to the open sea through inland waterways navigable for freight vessels used in inland ship traffic;***

Article 2 points (155)-(156)

The Hungarian authorities would like to comment that the distinction of port infrastructure and port superstructure under the draft text is unclear, and there are items assigned to the latter category that should belong to the former category. These are "surface arrangements" and "fixed equipment". Additionally, the notion of "mobile equipment" for the purposes of Article 2 point (155) and also Articles 56b (2)(a) and 56c (2)(a) (possibly with a different content) should be defined by the Commission.

Article 4(1) point (ff)

The Hungarian authorities consider the notification thresholds of investment aid for inland ports (EUR 20 million) and maritime ports (EUR 100-120 million) disproportionate as it is unclear what warrants a difference of five to six times between the two thresholds. The Hungarian authorities therefore believe that aid under a higher threshold of EUR 30 million for inland ports would still not be so distortive that a notification would be required, especially considering that the maritime port threshold would still be over three times higher. Also, the Hungarian authorities have identified recent maritime port cases in which the aid amount/investment cost was similar to or lower than recent inland port cases, which also underpins our opinion that the two thresholds are disproportionate and the increase of the inland port threshold would remedy this issue.

Recent inland port cases

- Freeport of Budapest (SA.37402): investment cost: EUR 11.05 million/ aid: EUR 10.22 million
- Győr-Gönyű (SA.38478): investment cost: EUR 20.5 million/ aid: EUR 18.85 million

- Baja (SA. 39177): investment cost: EUR 12.2 million/ aid: EUR 11.6 million
- Mohács (SA.41275): investment cost: EUR 16.03 million/ aid: EUR 15.1 million

Recent maritime port cases comparable to the above inland port cases

- Klaipėda (LT, SA.30742): investment cost: EUR 27.8 million/ aid: EUR 17.9 million
- Ventspils (LV, SA.38771): investment cost: EUR 6.15 million/ aid: EUR 5.2 million
- Lauwersoog (NL, SA.39403): investment cost: EUR 4.16 million/ aid: EUR 3.33 million

Article 5(2) point (k)

The Hungarian authorities welcome that aid in the form of the sale or the lease of tangible assets below market rates qualifies as transparent aid if the value is established either by an independent expert evaluation or a public benchmark. The Hungarian authorities believe a similar amendment to the *de minimis* regulations would be necessary since, via the ECN, the Commission has also stated that the below-market-rate sale of assets provided in the form of *de minimis* aid is not transparent aid. It must be added that the latter interpretation appears to contradict point 103 of the Notion of Aid.

Article 7(1)

The Hungarian authorities welcome this amendment proposed by the Commission, namely that the amounts of eligible costs can be calculated in compliance with the simplified cost options set out in Regulation (EU) No 1303/2013 in the case of co-funded projects. As a side note, the Hungarian authorities suggest that the word “operation” in the rule should be changed to “project” as in the GBER the term ‘operation’ is not used (the term ‘project’ is used instead widely in a similar sense) and the newly proposed second sentence of Article 7(1) is primarily a State aid rule despite the fact that it refers to a Structural Fund regulation.

The Hungarian authorities therefore propose the following modification to the Commission’s proposal:

Article 7(1)

“For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary. The amounts of eligible costs can be calculated in compliance with the simplified cost options set out in Articles 67 and 68 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council, provided that the **project operation** is at least partly financed through an EU fund that allows the use of these simplified cost options and that the category of costs is eligible according to the relevant exemption provision”.*

Article 12(2)

According to the Commission's proposal concerning the new text of Article 12(2) of the GBER, a new monitoring obligation will be introduced in the case of schemes under which fiscal aid is granted automatically based on tax declarations of the beneficiaries, and where there is no *ex ante* control that all compatibility conditions are met for each beneficiary. Under the proposed rule change, Member States will be required to set up an appropriate control mechanism for a regular verification once per fiscal year, at least *ex post* and on a sample basis, to ensure that all compatibility conditions are met.

The Hungarian authorities dispute the proportionality of this provision as it generates a significant administrative burden for the tax authorities (as compared to the aid element of fiscal aid provided under the GBER). However, if the Commission insists on the introduction of this new obligation, the Hungarian authorities request the Commission to make the provision more specific by defining the size of the sample as compared to the total number of beneficiaries. Another method of easing this burden would be a rule in Article 12(2) stating that this obligation only applies to taxpayers with fiscal aid of a gross grant equivalent above a certain threshold, and the sample should only be taken from this group of taxpayers.

The Hungarian authorities therefore propose the following modification to the Commission's proposal:

Article 12(2)

*"In the case of schemes under which fiscal aid is granted automatically without prior registration obligation based on tax declarations of the beneficiaries, and where there is no ex ante control that all compatibility conditions are met for each beneficiary, Member States shall set up an appropriate control mechanism for a regular verification once per fiscal year, at least ex post and on a sample basis, that all compatibility conditions are met **in the case of beneficiaries with an annual gross grant equivalent of fiscal aid exceeding EUR 200,000 under the scheme**, and in order to draw the necessary conclusions. Member States shall maintain detailed records of the controls for at least 10 years from the date of the controls. **The sample shall include at least 1% of the beneficiaries receiving an annual gross grant equivalent of fiscal aid exceeding EUR 200,000 under the scheme.**"*

Article 14(7)

The Hungarian authorities welcome the amendment proposal according to which the rule that the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years will only apply to large undertakings. This will ease the administrative burden of SMEs. In that spirit, the Hungarian authorities recommend that the restriction in the second sentence of this paragraph should also apply to large undertakings only.

The Hungarian authorities therefore propose the following modification to the Commission's proposal:

Article 14(7)

*"For aid granted to large undertakings for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years. For aid granted **to large undertakings** for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works."*

Art. 22(2)(a)

The Hungarian authorities disagree with the introduction of a new criterion of eligibility, namely that the undertaking will be required to start an activity that is new for this undertaking.

The Commission has recognized in the past regarding the entire territory of the European Union and for all sectors that small and medium sized enterprises (SMEs) face difficulties in obtaining funding (see for instance recital (40) of the GBER) and there is a market failure in this area. This hindrance is particularly relevant for small enterprises and start-ups. The Hungarian authorities' experience in SME funding does not support in any way that this proposed amendment is necessary, i.e. that small enterprises expanding their activity or starting similar activities would also require assistance in gaining funding. This is so because the main obstacles for small enterprises in gaining access to finance are the problem of asymmetric information and the high screening costs, and these do not vary depending on the novelty of the activity. The Hungarian authorities' position is that the measure is a proportional means to remedy this recognised market failure and, with regard to the amount of aid/aid element, it does not distort competition significantly more than *de minimis* aid, which is also available to medium-sized and large enterprises. Additionally, the notion of a "new activity" is unclear, and the introduction of this requirement increases the administrative burden of aid grantors.

It was discussed at the Advisory Committee meeting of 24 May 2016 that the purpose of this proposed modification is to exclude those enterprises from aid Article 22 that, after the five-year period, go into liquidation and re-establish themselves as new companies and thus become eligible for aid under Article 22. The Hungarian authorities understand the Commission's intention but this proposal will not have this effect, i.e. the owners of a failed company will be able to start a new company and that will qualify for aid under Article 22 (even for the same activity).

The Hungarian authorities therefore propose the following amendment to the Commission's proposal (please note that the Hungarian authorities propose the deletion of the "newly registered" phrase because a small enterprise approaching the final years of eligibility, i.e. a 3 or 4-year-old enterprise can hardly be labelled as "newly registered"):

“Article 22(2) Eligible undertakings shall be unlisted small enterprises up to five years following their registration, provided that the ~~newly-registered~~ small enterprise:

(a) ~~starts an activity that is new for this enterprise,~~

(b) ~~has not yet distributed profits, and~~

(c) ~~(b) has not been formed through a merger.”~~

Nevertheless, if the Commission insists on introducing the criterion of a new activity, the Hungarian authorities believe that more guidance is required on what constitutes a new activity (a definition should be added to Article 2 of the GBER).

Article 31(3)(b) and (d)

The Hungarian authorities welcome the addition of accommodation costs to the eligible costs under Article 31(3)(b). Also, they propose the amendment of the existing text of Article 31(3)(d) in order to extend the range of eligible costs by adding examination fees and translation/interpretation costs. On the basis of the Hungarian authorities' experience in granting aid, it can be concluded that a specific provision on the eligibility of examination fees and, in the case of courses held in a language other than Hungarian, on translation and interpretation costs is warranted.

The Hungarian authorities therefore propose the following amendment to the Commission's proposal:

Article 31(3)(b):

*“trainers' and trainees' operating costs directly relating to the training project such as travel expenses, **the trainees' examination fees, translation and interpretation costs**, accommodation costs, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project;”*

Article 56a

The Hungarian authorities welcome the fact that the Commission's proposal extends the scope of the GBER to investment aid for regional airports. With reference the Hungarian authorities' experience concerning small amounts of operating aid for regional airports, it could reduce the administrative burden of aid grantors without being significantly more distortive to competition than investment aid to regional airports if the GBER was supplemented by the rules of operating aid for regional airports on the basis of the rules of operating aid in the *Guidelines on State aid to airports and airlines*. In this way, such minor operating aid measures would also not have to be notified to the Commission.

It was discussed during the Advisory Committee meeting of 24 May 2016 that the *Guidelines on State aid to airports and airlines* are to be reviewed before the expiry of the GBER, and for

this reason it would be inconsistent with the GBER if operation aid was included in the latter. However, the Hungarian authorities believe that the operating aid rules could still be introduced in the GBER but would expire (the GBER would be amended again) when the Guidelines are reviewed. In this way there would be no inconsistency but operating aid would still be possible under the GBER, even for a limited period, which would reduce the administrative burden of Member States.

Article 56a (5)

The Hungarian authorities would like to dispute the applicability of the second sentence of this rule. According to this particular sentence, the aid may not be expected to cause the airport to increase its average annual passenger traffic above three million passengers within two financial years following the granting of the aid. The Hungarian authorities are unsure how this can be reliably projected, and it causes an unnecessary administrative burden. Also, it is unclear why it is a problem if the passenger number increases and what the sanction is if despite the projections the number of passengers increases above three million within the relevant period. The Hungarian authorities believe that this sentence should be deleted because the legal consequence of such an increase, a pleasant development, should simply be that the airport would not qualify for aid under Article 56a from then on.

Article 56b (7) and Article 56c (6)

These provisions both state that the duration of any concession or other entrustment for the rental or operation of the infrastructure to a third party shall not exceed a maximum duration of 30 years.

The Hungarian authorities disagree with the restriction of the maximum duration of the concession or other entrustment to 30 years because, according to Article 18(2) of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, “[f]or concessions lasting more than five years, the maximum duration of the concession shall not exceed the time that a concessionaire could reasonably be expected to take to recoup the investments made in operating the works or services together with a return on invested capital taking into account the investments required to achieve the specific contractual objectives.” The 30-year limit would not be compatible with this rule considering that in many cases the recouping of an investment takes more, and sometimes far more than 30 years. The Hungarian authorities therefore propose the modification of this limit to the useful economic lifetime of the investment because in this way certain types of investment whose recouping period is longer than 30 years will not be excluded.

The Hungarian authorities therefore propose the following amendment to the Commission’s proposal in Article 56b (7) and Article 56c (6):

*“The duration of any concession or other entrustment for the rental or operation of the infrastructure to a third party shall not exceed ~~a maximum duration of [30] years~~ **the useful economic lifetime of the infrastructure.**”*

II. Proposed amendments outside the scope of the targeted review

Recitals

The Hungarian authorities are of the opinion that, if possible, the recitals should also be updated to reflect the GBER amendments to be adopted, e.g. the last sentence of the first recital should be deleted.

Article 1(3) points (a) and (b)

The Hungarian authorities would like to clarify these provisions on the basis of the guidance of the Commission provided through ECN, namely that all Articles within the Section 4 are applicable to aid in the fishery and aquaculture sector. Except for Article 30, whose subject-matter is a particular type of aid to research organisations for studies in the fisheries and aquaculture sector, all other Articles of Section 4 should be available to the primary agricultural production sector, too.

The Hungarian authorities therefore suggest that the following changes should be made to Article 1(3) points (a) and (b):

*Article 1(3) point (a): "aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council with the exception of training aid, aid for SMEs' access to finance, aid in the field of research and development **and innovation**, ~~innovation aid for SMEs~~ aid for disadvantaged workers and workers with disabilities and regional operating aid schemes in outermost regions and sparsely populated areas"*

*Article 1(3) point (b): "aid granted in the primary agricultural production sector, with the exception of compensation for additional costs in outermost regions and sparsely populated areas, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development **and innovation**, ~~innovation aid for SMEs~~ environmental aid, training aid and aid for disadvantaged workers and workers with disabilities"*

Article 2 point (39)

According to the first sentence of Article 2 point (39), 'operating profit' means the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive. In answers given through ECN, the Commission stated that the 'relevant lifetime' is the economic lifetime of the investment. In the Hungarian authorities' opinion, for legal certainty reasons, the GBER should be modified accordingly as follows:

Article 2 point (39)

'operating profit' means the difference between the discounted revenues and the discounted operating costs over the ~~relevant~~ economic lifetime of the investment, where this difference is positive.

Article 2 point (50)

In the Hungarian authorities' opinion, in the notion of 'the same or a similar activity' as defined in Article 2 point (50), the four-digit numerical code is too wide. The Hungarian authorities' experience in the application of this rule suggests that in certain cases the notion of the same or similar activity covers activities that are hardly comparable despite the fact that they share the same NACE Rev 2 class (four-digit numerical code). Very often, such activities may look similar on paper, i.e. at an industry level, but the technology, the market and the know-how behind them are frequently non-comparable. As a result, and since the NACE codes offer no more detailed distinction than four digits, the Hungarian authorities suggest that the PRODCOM codes, which rely on the NACE Rev 2 codes (they share the first four digits) but are more detailed, should match for two activities to be considered the same or a similar activity for the purposes of the GBER.

Article 4(1)

The Hungarian authorities welcome the raising of the notification thresholds investment and operating aid for culture and heritage conservation (Article 4(1)(z)). In the Hungarian authorities' opinion, a similar increase is warranted in the case of investment aid for local infrastructure (Article 4(1)(cc)), investment aid for sports and multifunctional infrastructures (Article 4(1)(bb)) and training aid (Article 4(1)(n)). In the case of local infrastructures, the Hungarian authorities' experience suggests that a slightly higher notification threshold is reasonable because a number of projects can be identified that have very limited distortive effect, meet all the criteria of Article 56 but their costs ideally would be somewhat above the notification threshold. In the case of sports and multifunctional infrastructures, the EUR 50 million threshold for costs is sufficient but the aid threshold of EUR 15 million should be increased as the aid of a number of projects would, in an ideal case, be only a small extent above the EUR 15 million threshold. In the case of training aid, the threshold has been set at EUR 2 million, a low figure both in absolute and relative terms, for a long time, including the previous GBER, and a number of training projects with limited distortive effect on competition fall above this notification threshold. For the Hungarian authorities, it seems disproportionate that an SME may receive EUR 2 million without notification for consultancy services under Article 18 but a large enterprise can only receive the same amount for training under Article 31

The Hungarian authorities therefore propose the following modifications to Article 4(1):

Article 4(1)(bb)

“for investment aid for sports and multifunctional infrastructures: EUR ~~45~~ 25 million or the total costs exceeding EUR 50 million per project; operating aid for sport infrastructure: EUR 2 million per infrastructure per year; and”

Article 4(1)(cc)

“for investment aid for local infrastructures: EUR ~~40~~ 15 million or the total costs exceeding EUR ~~20~~ 30 million for the same infrastructure”

Article 4(1)(n)

“for training aid: EUR ~~2~~ 3 million per training project”

Article 6(2) point (e)

The Hungarian authorities propose the splitting up of this point (e) as it contains two items between which there is no stronger link than between other points on this list. Also, the Hungarian authorities are of the opinion that the two items in this point are both very significant in their own right, especially from a State aid perspective, and it would be both practical and logical if point (e) was divided up as follows:

(e) type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and ~~amount of public funding needed for the project;~~

(f) amount of public funding needed for the project;

Article 13(b)

In the Commission’s proposed amendment to the GBER, under Article 13(b), aid to the transport sector as well as the related infrastructure and energy generation, distribution and infrastructure (except for operating aid schemes in outermost regions and in sparsely populated areas) is not eligible for investment aid under the GBER. The Hungarian authorities believe that there are two unnecessarily restrictive provisions in this item.

First, the notion of the “related infrastructure” of the transport sector is problematic as it is unreasonably vague: numerous types of infrastructure could fall within the scope of this exception although they are associated with other industries more closely than with transport or they serve the purposes of other industries but still can be seen as distantly related to transportation (e.g. warehouses). The Hungarian authorities therefore suggest the deletion of “as well as the related infrastructure” because the fact that the transport sector may receive no regional aid ensures that its infrastructure is not granted regional aid.

Second, the Hungarian authorities believe that energy generation should not be excluded from the scope of regional aid as a whole. Energy infrastructure can be supported under the GBER (e.g. under Article 41), and it would simplify the granting of aid for investment projects if it was possible to provide aid under e.g. Article 14 for the energy infrastructure necessary for the operation of an initial investment (it would ease the administrative burden of applying two Articles of the GBER for essentially the same investment). For example, one of the horizontal objectives of the ESIF funds is to increase the use of renewable energy. Therefore, if an SME wants to buy new machinery to extend its original activity, there is an incentive for the SME to buy not only the machinery but also the solar cells which make the machine function. However, although we are talking about one project, from a State aid point of view, the project has to be split into two: 1) machinery (regional aid), 2) solar cells (investment aid for renewable energy). This can cause a significant administrative burden for the beneficiaries (particularly for SMEs) and also for the aid grantor when even from the aid intensity point of view the difference is negligible (regional aid intensity is normally lower).

As a result, the Hungarian authorities propose the following modifications to Article 13(b) of the GBER:

Article 13(b)

"aid to the transport sector, ~~as well as the related infrastructure~~ and energy generation, distribution and infrastructure except for operating aid schemes in outermost regions and in sparsely populated areas, and except for the energy infrastructure of an initial investment not related to energy generation or distribution if the energy infrastructure of the investment is eligible for aid under Section 7,"

Article 13(d)

Article 13(d) prohibits regional investment aid to a beneficiary that, at the time of aid application, has closed down the same or a similar activity in an establishment in the EEA in the preceding two years or has concrete plans to close down such an activity within a certain period. The Hungarian authorities are of the opinion that the closing down of the same or a similar activity can occur for reasons beyond the control of the beneficiary, for instance a natural disaster may strike the site, and in such cases it would be unfair to exclude the beneficiary from regional investment aid for two years in other Member States. Additionally, the Hungarian authorities believe that, in line with paragraph 122 of the *Guidelines on regional State aid for 2014-2020*, the closing of the same or similar activity should only exclude regional investment aid if there is a causal link between the closure and the relocation. Consequently, the Hungarian authorities propose the following modification to Article 13(d):

Article 13(d)

*(d) individual regional investment aid to a beneficiary that, at the time of aid application, (i) has closed down the same or a similar activity in an establishment in the EEA in the preceding two years **unless the closing down has occurred for compelling reasons beyond the reasonable control and the***

business risks of the beneficiary or, (ii) has concrete plans to close down such an activity, within a period starting at the date of the aid application up to two years after the initial investment is completed. This only applies to a closure which takes place in a different contracting party of the EEA than the one in which the aid will be granted. The prohibition of such aid only applies if there is a causal link between the aid and the relocation.

Article 14(13)

According to Article 14(13) of the GBER, any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another aided investment in the same NUTS 3 region considered to be part of a single investment project.

The fact that this provision uses the phrase “another aided investment” suggests that any other investment receiving State aid of any form needs to be taken into account for the purposes of this rule. The Hungarian authorities are of the opinion that this causes significant difficulties in practice, as State aid may be granted on a lot of grounds for compatibility. It creates a significant extent of legal uncertainty about how projects receiving other forms of aid can be handled as part of a single investment project receiving regional investment aid, not to mention the tremendous administrative burden if the beneficiary received aid of small amounts on numerous occasions in the relevant period in the relevant region. For this reason, the Hungarian authorities recommend the limiting of “aided investment” to investment projects having benefited from regional investment aid. The Hungarian authorities therefore propose the following modification to the first sentence of Article 14(13):

Article 14(13)

*“Any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another ~~aided~~ investment **having benefited from regional investment aid** in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project.”*

Article 14(14)

The provision of Article 14(14) according to which the beneficiary must provide a financial contribution free of public support of at least 25% of the eligible costs creates a lot of uncertainty in the practical application of the GBER. As there is no definition of “public support”, the grey areas are abundant. For instance, state-owned development banks can provide loans on market terms, and an argument can be made both for and against whether this would constitute public support. Also, the resources of state-owned commercial banks could theoretically be considered “public support”, even if provided on market terms. In order to ensure legal certainty, the Hungarian authorities suggest a State aid based definition

of the beneficiary's own contribution. Accordingly, the Hungarian authorities would like to ask for the following modification of Article 14(14):

Article 14(14)

*The aid beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing **free of State aid**, ~~in a form, which is free of any public support~~. In the outermost regions an investment made by an SME may receive an aid with a maximum aid intensity above 75 %, in such situations the remainder shall be provided by way of a financial contribution from the aid beneficiary.*

Article 17(2)

Under Article 17(2), the eligible costs of investment aid to SMEs are either or both of (i) investment costs and (b) wage costs. The Hungarian authorities suggest that this provision should be harmonised with Article 14(4), because the Hungarian authorities believe the content of Article 14(4) and Article 17(2) is the same but they should have the same wording, too, to avoid any misunderstanding. As a result, the Hungarian authorities propose the following provision to replace Article 17(2):

Article 17(2)

2. The eligible costs shall be ~~either or both of the following~~ as follows:

- (a) the costs of investment in tangible and intangible assets;*
- (b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years,*
- (c) a combination of points (a) and (b) not exceeding the amount of (a) or (b), whichever is higher.*

Article 17(3)

The definition of an eligible investment under Article 17(3) is very similar to the definition of an initial investment. There are differences, but the Hungarian authorities have not yet seen a case which would merit the retaining of this dissimilarity. For this reason, and to simplify the application of the GBER, the Hungarian authorities suggest that the notion of an initial investment as defined in Article 2 point (49) should be referred to in Article 17(3).

As a result, the Hungarian authorities propose the following provision to replace Article 17(3):

~~"3. Aid may be granted for an initial investment. In order to be considered an eligible cost for the purposes of this Article, an investment shall consist of the following:~~

~~(a) an investment in tangible and/or intangible assets relating to the setting up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or~~

~~(b) the acquisition of the assets belonging to an establishment, where the following conditions are fulfilled:~~

- ~~— the establishment has closed or would have closed had it not been purchased;~~*
- ~~— the assets are purchased from third parties unrelated to the buyer;~~*
- ~~— the transaction takes place under market conditions."~~*

Article 19(2)

The Hungarian authorities are of the opinion that the range of eligible costs is unreasonably limited in the case of aid to SMEs for participation in fairs, and suggest that they should be extended since a number of direct costs of participation are excluded despite the fact that they may constitute a much larger share of the total costs than the currently eligible items. For this reason, the Hungarian authorities recommend the amendment of Article 19(2) of the GBER as follows:

Article 19(2)

*"The eligible costs shall be the costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition, **the accommodation and travel expenses of the employees of the undertaking participating in the fair or exhibition, and the transportation and insurance costs of the items to be displayed at the exhibition.**"*

Article 21(13) point (a)

According to the experience of the Hungarian authorities, it causes issues in the application of Article 21 that both paragraph (13) point (a) and paragraph (17) refers to the implementation of the measure yet they cover different tasks. To resolve this contradiction, the Hungarian authorities propose the following modification:

Article 21(17)

*A Member State may assign the implementation of a risk finance measure to an entrusted entity **with the exception of the business and commercial decision-making tasks carried out by financial intermediaries under Article 21(13)(a).***

Article 26(7)

The Hungarian authorities would like to clarify the content of this provision on the basis of the guidance provided by the Commission through ECN according to which monitoring applies where a research infrastructure receives public funding for both economic and non-economic activities and monitoring should be carried out for the economic life of the infrastructure. This addition to the provision would facilitate the task of the beneficiary and the aid grantor in complying with the regulation.

The Hungarian authorities therefore propose that Article 26(7) of the GBER should be modified as shown below:

*“Where a research infrastructure receives public funding for both economic and non-economic activities, Member States, **for the economic life of the infrastructure**, shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.”*

Article 41(5)

The second sentence of Article 41(5) of the GBER states that no aid shall be granted or paid out after the installation started operations and aid shall be independent from the output. According to the practical guide to the GBER published by the Commission, the “paid out” part should be interpreted strictly to distinguish this provision from Articles 42 and 43, which regulate operating aid.

The Hungarian authorities believe the restriction of the pay-out of the aid (i.e. that it is not allowed to be paid out after the start of operations) is unnecessary, and even in the practical guide the GBER (questions 175 and 176), the Commission mentions exceptions. The Hungarian authorities are convinced that Article 41 on the one hand and Articles 42 and 43 on the other hand can be distinguished even without the restriction on the timing of payment as the eligible costs and the purposes of the aid are different. Also, the rule in its

current form would potentially give rise to absurd cases when the beneficiary purposefully does not put the installation into operation in order not to lose the last instalment of the aid.

Consequently, the Hungarian authorities suggest that the first sentence of Article 41(5) should be amended as follows:

Article 41(5)

"(...) No aid shall be granted ~~or paid out~~ after the installation started operations and aid shall be independent from the output."

Article 53(2) point (b)

The Hungarian authorities believe that the list in Article 53(2)(b) misses one key cultural infrastructure/organisation/institution that should be mentioned here for legal certainty: zoos. Zoos, in the Hungarian authorities' opinion, qualify as cultural organisations and are important items of a country's cultural and natural heritage, and therefore are already covered by this rule through interpretation, as confirmed by question 226 of the practical guide to the GBER. Nevertheless, the Hungarian authorities request the following amendment to this provision for legal certainty reasons:

Article 53(2) point (b)

*"tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites, and buildings; natural heritage, **including zoological parks**, linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;"*

Article 53(4) point (a)

The Hungarian authorities are convinced that Article 53(4) point (a) already covers the energy infrastructure upgrade/improvement of the beneficiary, and this has been confirmed by the Commission's reply to question 237 of the GBER. However, for legal certainty reasons, the Hungarian authorities request the specific inclusion of this in Article 53(4) point (a), partly because in many cases it would be difficult to separate the costs of upgrading the energy infrastructure from upgrading the general infrastructure. Consequently, the Hungarian authorities request the following amendment:

Article 53(4) point (a)

*"costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, **including energy infrastructure**, if at least 80 % of either the time or the space capacity per year is used for cultural purposes;"*

Article 54

Article 54 of the GBER (Aid schemes for audiovisual works) excludes by definition *ad hoc* aid within the meaning of Article 2 point (17) of the GBER. The Hungarian authorities would like to ask for the lifting of this restriction. The reason for this request is that this restriction it makes the granting of aid for audiovisual works unnecessarily inflexible and thus it might exclude the production of specific audiovisual works that require aid due to a market failure but might not meet the requirements of a particular scheme or might require the flexibility of *ad hoc* aid.

Article 55 (9)

According to Article 55(9), for operating aid for sport and multifunctional recreational infrastructure, the eligible costs are the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc.

On the basis of questions that have arisen in practice, the Hungarian authorities consider it necessary to clarify whether the sports events could in principle be treated as sport infrastructure related activity, e.g. that the costs of organising sport events and license payments for the organisation of the events/competitions be treated as a sport infrastructure related activity and thus be eligible for aid under Article 55.

The Hungarian authorities therefore propose the following amendment to Article 55(9):

*“For operating aid for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, **the costs of organising events, licence payments necessary for organising events**, etc., [...].”*

Annex I Article 3(3)(a)

Article 3(3) of Annex I of the GBER defines linked enterprises, and point (a) of this paragraph states that an enterprise qualifies as a linked enterprise of another if the enterprise has a majority of the shareholders' or members' voting rights in the other enterprise. By contrast, Article 2, which defines partner enterprises, refers to both voting rights and capital. The Hungarian authorities believe these two provisions should be harmonized by modifying Article 3(3) point (a) as follows:

Annex I Article 3(3)(a)

*“an enterprise has a majority of **the capital or** the shareholders' or members' voting rights in another enterprise”*