

**Comments of the Czech Republic on the 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**

**Comments on R&D part**

1. **Article 2, points 84, 85 and 86** – CZ disagree with the new proposal, which adds reference to TRL. There is no definition of TRL in the legal document. In general annex G is only a list of TRL with their names, but missing any deeper definition. The general annex can also be easily changed which creates legislative uncertainty. Without a proper definition it can be subject of different explanations and understandings. Therefore the new definitions would create legislative uncertainty.  
We suggest 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 for applied research in suggested intensity for industrial research. In practice there is a big problem to distinguish between industrial research and experimental development and the line can be different in different fields.
2. **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.
3. **Draft article 25a, par. 2 and 4** – the paragraph 2 says that MSCA and ERC PoC projects with Seal of Excellence shall fulfill conditions laid down in paragraphs 4 and 7 of the draft article 25a. But the text of par. 4 is defined for SME-instrument. It looks as a mistake. We suggest new formulation of the par. 4 as this „The categories, maximum amounts and methods of calculation of eligible costs shall be those defined under the Horizon 2020 Marie Skłodowska-Curie nad ERC Proof of Concept actions or under the Horizon Europe programme.“
4. **Draft article 25b** – the draft article tries to combine aid provided to co-funded projects and Teaming actions. Unfortunately, the difference between these two types of actions is probably too wide that trying to combine them in one article causes discrepancies and is ineffective. First of all, Teaming actions are CSA, coordination and support actions, not research actions, therefore the paragraph 2 should not be valid for Teaming actions. The par. 3 includes maximum amounts and methods of calculation of eligible costs, but the draft article 25b should cover co-financing from national/regional support, not financing of Seal of Excellence holders (for that is draft article 25a, though it does not cover Teaming actions). For that reason there is no logic in keeping the maximum amounts and methods of calculation of eligible costs the same as in Horizon 2020/Horizon Europe. Also, par. 5 should not be valid for Teaming actions because Teaming itself has contradictory condition that the total amount of the complementary funding must be at least at the same level or more than the total Horizon 2020 funding requested.

Taking this condition into account it should be written in the par. 5 that it is not valid for Teaming actions.

We suggest to separate the two types of actions into two articles. We suggest to keep draft article 25b for co-funded projects only and delete all parts about Teaming actions, and incorporate Teaming actions into actual article 26 which is more suitable for them. Our suggestion is hereinafter.

#### 5. **Draft Article 26**

##### ***Investment aid for research infrastructures***

1. *Aid for the construction or upgrade of research infrastructures that perform economic activities, and aid provided to projects under Teaming actions independently evaluated and selected following transnational calls under Horizon 2020 or the Horizon Europe programme 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. *Where a research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.*
  3. *The price charged for the operation or use of the infrastructure shall correspond to a market price.*
  4. *Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.*
  5. *The eligible costs shall be the investment costs in intangible and tangible assets. **For Teaming actions, in addition, the categories of eligible costs shall be those defined under the Horizon 2020 or Horizon Europe programme.***
  6. *The aid intensity shall not exceed 50 % of the eligible costs. **For projects under Teaming actions the aid for the project-related infrastructure investments shall not exceed 70% of the investments costs in tangible and intangible assets.***
  7. *Where a research infrastructure receives public funding for both economic and non-economic activities, Member States 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.*
6. **Draft article 56e, par. 6** – Are the requirements of paragraph 6 relevant only for financial products supported by the InvestEU Fund? Is it possible to combine aid provided under Article 56e, par. 6 with other aid instruments (e.g. grants)?
7. **Draft article 56e, par. 6, letter a) point iii)** – CZ proposes undoubtedly clarify whether the aid for „education and training“ involves aid for education and training of the beneficiary (i.e. the

beneficiary is educated/trained) or aid for providing other subjects with education and training (i.e. the beneficiary is providing other subjects with education/training).

8. The draft amendment specifies only those instruments within which the **Seal of excellence** was granted under Horizon 2020 - Instrument for small and medium enterprises, MSCA and ERC proof of concept, and forgets Teaming actions. However it stipulates that it shall be valid for H2020 and Horizon Europe. With regards to this fact, it shall include all instruments under which the EC will grant Seal of Excellence.
9. CZ proposes **to add a new category of aid for training/education** which is not financed entirely or mainly by public funds but which is a part of public education system and is controlled by State from material content (e.g. private secondary schools and private universities, life long learning, informal education etc.).

The reason of the amendment is to get confirmation that when the training/education funds activities are carried out by the State or on behalf of the State as part of its public duties it is not State aid, as well as when support includes fundings of education institutions to provide courses that carry out a social-cultural or educational public service for its citizens.

#### **R&D definition:**

- The draft amendment related to R&D changes definitions of industrial research and experimental development. We understand the connection with Horizon programmes and also the unification of definitions, but we propose also simplification which is also necessary. In the R&D Framework there is a definition of applied research, which means industrial research (IR), experimental development (ED) or any combination of both. But this definition is not included in GBER and the aid thresholds still differs for IR and ED. In the reality in R&D projects it is very difficult to separate or even indicate these two activities from each other in order to state which one of them prevails. This problem could be solved with the same approach as in R&D Framework for notification thresholds (see paragraph 89) and in new GBER both activities should be covered with definition of applied research while the aid intensity should correspond to the current one for industrial research.
- Furthermore, as it is noted in the draft amendment the „Innovations actions“ as defined in Horizon, which are most relevant for SMEs, correspond to the activities of TRL 5 – 8 and fall into the category of experimental development. This creates a significant discrepancy between the aid intensity of Horizon and the state aid rules for these types of actions – e.g. the Innovation projects as the 2nd phase of SME Instrument allow for aid intensity of 70% without the necessity of a research component in the project, while according to the state aid rules a medium-sized company would receive only 35% for the same activity. This discrepancy is not justified and would be solved by using the definition of applied research and the same aid intensities.
- Horizon differentiates between Research and Innovation Actions and Innovation actions on the basis of what is the main goal of the project. The Innovation actions are allowed 100% intensity of funding if a research component is present. However, the application of GBER

categories for research and development lead to difficult implementation, where different levels of aid intensities are applied within a project and other reasons (see above). Innovation actions are not directly replicable by GBER, as the type of action falls mostly into the category of experimental development, some part of the project may fall into industrial research, while yet some other costs are included in the Article 28 (GBER).

- According to our view, it would be easier for the applicants as well as for the programme administrators to take into account the predominant part of the project to determine the aid intensity, which would be the same for the whole project and to include one aid category in line with the Innovation actions of Horizon into the GBER, which would include all the related costs and activities with one aid intensity for SMEs.
- Change in the R&D definitions as regards their TRL reference broadening – TRL are defined (for Horizon; since there are other definitions of this term e.g. created by NASA) in a document of non-legislative nature (the annex of the Working Program Horizon). This means that the definitions can be changed simply whereas upon fixing them into regulation it will no longer be the case. Moreover, adding these TRL references to the definitions has more risks than positives since the TRL definitions are not clear enough and can lead to interpretational questions and ambiguities of which is the current GBER already ripe. The reason of this amendment as well as its added value is not clear.
- So our main proposal is to combine IR and ED into applied research with current aid intensities for IR and not to use TRL references/alternatively an aid category should be defined, which would allow to fully replicate Innovation actions in GBER with one aid intensity for SMEs and all the related eligible costs.

#### **Research infrastructure:**

- **Article 25b par. 6 d)** – claw back mechanism

We would welcome any guidance from the Commission in the sense of document (good practises or any other) in which Commission describes how the granting authorities are supposed to force/use claw back mechanism and apply this provision in practise.

#### **Broadband infrastructure:**

- **Proposed Article 56e par. 3 c).** CZ proposes to extend art. 52 GBER of project targeting to grey areas. With regards to recent extensive EC decision practice.

#### **General Comments**

1. Definition proposed in **Article 2, point 171**: "commercial financial intermediary" means a financial intermediary which operates on a for profit basis and at full own risk, without a public guarantee, to the exclusion of national promotional banks or institutions.

From our point of view the definition of commercial financial intermediary is not clear with regard to the "national promotional banks or institutions". From the proposed text it is not clear to which part of the definition relates the exclusion of promotional banks/institution.

May national promotional banks/institutions, which does not operate on a profit basis and not at its own full risk, be commercial financial intermediary? May promotional bank/institution receive a public guarantee to be still considered as commercial financial intermediary?

May national development bank, which is not engaged in any economic activity (national development bank which only administers precisely specified programs in the public interest on behalf of the State), be commercial financial intermediary?

We would appreciate that the definition will be specified in the light above mentioned.

2. Definition proposed in **Article 2, point 180**: there is a reference (given in brackets) of the definition in recital 11 of Commission Decision 2012/21 / EU. However, that point of the Commission decision does not provide any further definition of the services referred to in the draft Article 2 (180), but only a list of them in a similar form to that mentioned in the draft paragraph 180. The reference is misleading.

3. Proposal for amendments to **Article 8 (3)**: first subparagraph referred to in paragraph 3 (b) in the first sentence, determine what is not taken into account for determining whether the provisions of paragraph 3 on cumulation have been complied with. This subparagraph is however itself part of paragraph 3. There is therefore no clarification as to what part of paragraph 3, with the exception of the first subparagraph (b) (for which the exception to the monitoring of the cumulation provisions should apply), the Commission has in mind.

4. Second subparagraph referred to in **Article 8 (3) (a)**. includes the terms 'senior loan' or 'senior loan guarantee'. The proposal does not explain what these terms mean.

5. In **Article 56e (8) (a)** we propose a new point (iv) "infrastructure for healthcare".

6. **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 understanding 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.

7. 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.

8. **Article 9 (1) c** – we disagree with yet another administrative obligation for aid providers in the field of transparency. The transparency module (**TAM**) must contain all the projects above a given threshold (500 000 euro), so why should a certain economic sector has a specific treatment? Another problem with this provision is the fact that many businesses have more economic activities of various kinds including agricultural and non-agricultural. It is not clear when the project should be included into TAM in this case. Most definitely it will create bigger administrative burden for state aid providers and we propose not to implement this provision in GBER and leave it to ABER.

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### Comments going beyond the current revision of the GBER

1. Concerning **SME** we would like to suggest the following:

- Specification of relation through natural persons. The current methodology for SME is ambiguous.
- When relation through natural persons occurs, the same or adjacent market shall not be taken into account. (When assessing, all companies shall be included. It is very difficult to obtain all the data.)
- When assessing the SME, only linked enterprises shall be included (i.e. links where a dominant influence of a given subject exists). (This would be provide significant simplification of the SME methodology.)
- In addition to endogenous growth/decline, the SME Methodology should include an assessment of exogenous growth/decline.
- Unifying methodologies. There are currently 3 different methodologies for assessing links between businesses (i.e. 1. SME Methodology, 2. De minimis Methodology, 3. Undertakings in difficulty Methodology).

2. We would like to propose clarification of the **definition of „Relocation“** and its control, especially in relation to employees. We suggest that at least the last part of the condition should be removed (see below):

„‘relocation’ means a transfer of the same or similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product or service in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the beneficiary in the EEA;“

### 3. **Integrate a brand new GBER article "Investment Aid for Transforming Structurally Disadvantaged Regions / Coal Regions"**

Text proposed for the new article:

#### **Art. X**

#### ***Investment Aid for Transforming Structurally Disadvantaged Regions / Coal Regions***

*a) Coal regions in the context of this Article are those NUTSII territories of the Member States of the European Union in which, by January 1 2018, brown and/or hard coal mining was actively taking place or is still ongoing.*

*b) In the context of the decarbonisation challenges faced by the transforming structurally disadvantaged regions / coal regions today and in the near future, the intensity of state aid for public and private entities, regardless of their size, implementing investment projects within these regions with clearly defined, by regional and/or national authorities approved and in practice implemented restructuring / transformation strategy, will be increased by 15 percentage points.*

#### **4) Modification of Article 13 of the GBER – “Scope of regional aid”**

Proposed modification - to include in the scope of regional investment aid also the energy generation, distribution and infrastructure using non-coal energy sources in order to foster the development of low-emission and emission-free energy solutions in so-called coal regions, which are often historically the main energy centers of individual countries - enabling regional investment aid also in these areas of energy seems to be extremely important in the context of the challenges of energy transformation and the fight against climate change.

#### **5) Proposal to amend Article 13 (a):**

##### ***Art. 13 - Scope of regional aid***

*This Section shall not apply to:*

*a) aid which favors activities in the steel sector, the coal sector, the shipbuilding sector, the synthetic fibres sector, the transport sector as well as the related infrastructure, energy generation, distribution and infrastructure; exceptions to which this rule will not apply are activities in the energy generation, distribution and infrastructure using low-emission and emission-free energy solutions in so-called coal regions.*