

SUBJECT: Participation at the public consultation concerning the proposed amendment of the Regulation c.d. GBER

This document represents the contribution provided by the law firm Fratini & Partners, with number of the Transparency Register of the European Union 530810514265-64, based in Rome (RM) - Italy, regarding the modification programme of GBER regulation about state aid.

This contribution is made to explain the point of view of some Italian companies active in the fashion and luxury sector applied to the different product categories of reference (fashion, design, jewellery, automotive, hospitality).

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Regulation (EU) of the European Commission n.651 / 2014 (so-called GBER) is one of the main pillars of the process of modernization of state aid in the EU, started by the European Commission with the Communication COM (2012) 209 final of the 8.5.2012, as well as a fundamental regulatory instrument to achieve the objectives and aims of the correct application of the rules on State aids, their simplification and the reduction of administrative burdens.

The European Commission has recently prepared a draft Regulation for the revision of the GBER in three areas, to allow Member States to implement the following measures without prior notification:

1. national funding contained in financial products supported by the InvestEU Fund;
2. research, development and innovation projects ("RSI") awarded the seal of excellence in the context of Horizon 2020 or Horizon Europe and co-financing projects and Teaming actions, always within the framework of Horizon 2020 or Horizon Europe;
3. European territorial cooperation projects (CTE).

In order to obtain feedback on the changes of the Regulation, or even suggestions for modification and implementation of the framework, the Commission has launched a public consultation, granting the participation of both individuals and collective bodies.

Italian companies of luxury and fashion sector consider themselves directly involved in the changes that the EU Commission intends to make, for the following reasons.

These companies belong to the sector identified and analysed in the working document of the Commission services " Competitiveness of the European high-end industries ", SWD (2012) 286 final.

Today this kind of industry have to face important changes with great impact, which require the modification of their business model, in order to remain competitive.

These changes require huge investments in research and development and more generally in innovation, both technological and non-technological.

It will be necessary, in particular, to combine various types of innovation, such as technological innovation, innovation based on the development and exploitation of digital tools, scientific innovation, but also innovation deriving from artistic creativity and aesthetics and finally, innovation consumer oriented.

It is clear the cultural and creative industries are interested in the changes made in the field of Research and Development by the Commission, since this is a sector very sensitive to research and development and innovation, both with regard to more traditional investments in R & D & I and with regard to those imposed by the digital revolution

The point of greatest interest in the draft of revision, is represented by the changes on research, development and innovation projects awarded the seal of excellence within the Horizon 2020 or Horizon Europe tasks; therefore, it is only on this topic that the contribution offered is intended to focus.

In particular, Recital no. 5 of the draft regulation for amending the GBER, as it refers to the projects financed under Horizon, defines them as eligible to receive state funding without the requirement of prior notification in the matter of State aid, pursuant to art. 108 paragraph 3 of the Treaty.

This recital expresses the intention of the European Legislator to "reward" the investments that obtain the Horizon seal of excellence with exemption from prior notification, recognizing the necessary and "automatic" compatibility with the internal market. However, the assessment of this objective is certainly positive, as Horizon is in charge of co-financing research projects development and innovation included in some identified areas through specific Work programs (c.d. priority themes) with the aim of fostering intelligent, inclusive and sustainable growth.

Therefore, encouraging the projects that have received the Horizon seal of excellence, considering them compatible with the rules on State aid, is certainly important to promote the competitiveness of companies, and pursue the objectives of sustainable technological development.

At the same time, this change may encourage companies to invest further in research and development and innovation, allowing the development of cutting-edge production chains, to face the competitors of the global market and therefore, from a more general perspective, to foster development of the

internal market. In the fashion and luxury sector, the *maisons* take advantage of the close collaboration of a thousand small production companies dispersed throughout Italy - so-called *façons* - which require a series of investments to be able to evolve their production techniques in the face of this wave of innovation. These investments are often borne by the maison themselves, which therefore demonstrate a strong link with the Italian artisan and industrial fabric.

The considered number 6 envisages that, for projects that have benefited from the Horizon instruments, in order to be able to benefit from State aid, they must fall within the definition of fundamental research, industrial research and experimental development referred to the GBER regulation (and precisely to the Article 2 entitled "definitions" points 84, 85 and 86).

Furthermore, the definition of Technological Readiness Level (TRL) has been included, it is the level of technological maturity of the projects. the definition of TRL is provided in art. 2 cited, point 83-bis, introduced with the draft.

This recital also introduces an important topic, treating the possibility that the Horizon projects are also admitted to benefit from state aid, if they fall within the specific definitions contained in the GBER regulation and respecting certain parameters better detailed in the regulatory act.

Turning now to the analysis of the regulatory changes contained in the GBER revision, it concerns the whole of Chapter I of the GBER Regulation (entitled "Common provisions") and Chapter II.

The most significant innovations within the limits of the purpose of this contribution, refer to section four of Chapter II, entitled "aid for research, development and innovation", a real center of interest for companies participating in the consultation.

The introductory article of section four, is article 25, concerning State aid for R&D projects; in this context, the draft Regulation provides for the partial modification of paragraph 1, with the addition of projects with the Horizon Europe stamp of excellence, among those compatible with the internal market, and therefore exempted from notification pursuant to art. 108 paragraph 3 of the Treaty.

The provision implements what was introduced with the before mentioned recital 5, previously analysed, including the Horizon Europe projects among those automatically compatible with the common internal market. Therefore, the control of innovativeness and excellence carried out by the independent experts during the approval for the Horizon project is considered sufficient to make the project compatible with the objectives pursued by the Union at the level of the internal market, competitiveness and protection of competition.

It is also important the introduction of the art. 25-bis which reiterates the provisions of art. 25 about the compatibility of Horizon projects with the internal market, with reference to SMEs.

The following paragraphs, it is better detailed the aid granted to the Horizon projects; in particular paragraph 3 provides that the part of the subsidized project must fall into one of the following

categories: (i) fundamental research, (ii) industrial research, (iii) experimental development, (iv) feasibility studies.

The willingness to grant state aid is emphasized only for the purpose of promoting innovation, similar to that done also for other incentive measures.

Paragraph 4 states that the maximum amounts and methods of calculating the eligible costs are those defined by the Horizon program, while paragraph 5 establishes that the maximum aid intensities are 100% for fundamental research, and 70% for the experimental development or feasibility studies.

Therefore, in the light of what has been stated so far, it is clear that the amendment proposals included in the GBER revision must certainly be evaluated in a positive manner, since they tend to eliminate restrictions on investments in the R & D & I sector, which - it is believed - must be the driving force to pursue all the Union objectives relating to the internal market, competition and the competitiveness of companies.

Research, development and innovation are undoubtedly worthy of continuous incentives, given the central role they play in relation to maintaining the competitiveness of European companies with respect to the challenges posed by the global market, where it is fundamental to succeed in combining innovation technology with its own peculiarities, or with its own tradition combined with product excellence. This is especially true for companies active in the fashion and luxury sector.

If until today the business model has allowed these companies to become points of reference in the market of excellence; currently there is a different need, linked to the necessary implementation of new digital technologies, as regards both the production of goods, and the business organization, from the management of stores to that of warehouses.

More specifically, in order to better detail the different types of investments required by the European cultural and creative industry, the following reported investments are decisive for the sector in question:

1. new models and solutions for product creation and customer enhancement;
2. new models and solutions for supply chain management;
3. new models and solutions for Retail management;
4. investments for the sustainable development of the business, in particular focusing on the circular economy and the recovery of materials used in production cycles (id est raw materials, packaging and final products);
5. investments in the search for new materials, making the drive for innovation converge with the growing sensitivity to environmental issues;
6. investments in the training of employees;
7. investments in the construction of new production plants;

8. process innovation, in relation to the application of new or significantly improved production and / or distribution methods;
9. internationalization processes, which should make it possible to improve the presence of national companies abroad;
10. investment in fight against counterfeiting.

In conclusion, it is evident that the investments of luxury and fashion companies represent essential investments, falling within strategic areas for the European Union. Proof of this is that these investments fall within some of the Work programs envisaged by Horizon 2020, therefore encouraged at Union level, precisely because of their compliance with the requirements of the internal market and competitiveness.

Secondly, it should be noted that the projects highlighted, even if they should not be considered part of the R&D activities, are certainly within the definition of innovation.

According to the OECD (see Oslo Manual) innovation is "the implementation of a new or significantly improved product (good or service), or a process, a new marketing method, or otherwise a new business organizational method, workplace or external relations ".

Therefore, the concept of innovation is declined under four profiles:

- to. Product innovation: a new or clearly improved good / service with respect to its features or uses;
- b. Process innovation: implementation of new or significantly improved methods and processes of production or delivery;
- c. Marketing innovation: innovation aimed at creating significant changes in packaging, product design, promotions or price strategy (e-commerce), in communication channels or more generally in forms of interaction with customers;
- d. Organizational innovation: implementation of a new organizational method in the business practices of a company (eg new production processes) or in external relations (acquisitions, mergers).

In this definition of innovation, also adopted by the GBER Regulation itself, which is the subject of this analysis, the aforementioned investments of luxury and fashion companies can certainly be included.

Innovation, like R&D, should therefore be adequately protected and encouraged by public institutions.

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Thanking to the opportunity given to participate in the legislative process of the GBER revision, we remain available to provide any further clarification and contribution.