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Input to the targeted review of the General Block Exemption Regulation provided by Interreg Baltic Sea Region Managing Authority/Joint Secretariat on 27 July 2019 (HT.5224_Reply_from_an_organisation)

This input was provided based on the harmonised response of Interreg Programmes submitted to this consultation by the Interact Programme. In addition to the harmonised Interact position, this document includes additional input on more technical aspects of the GBER.

About our organisation

Interreg Baltic Sea Region supports integrated territorial development and cooperation for a more innovative, better accessible and sustainable Baltic Sea. The Programme is an agreement between EU member states Denmark, Estonia, Finland, Latvia, Lithuania, Poland, Sweden and the northern parts of Germany as well as partner countries Norway and the northwest regions of Russia.

General opinion

We welcome the proposed amendment and consider it a constructive response of the European Commission to the requests voiced by the Interreg community. In absence of the option to fully exempt Interreg from State aid rules, special provisions in the GBER (and the de minimis regulation) are important steps in the right direction.

As regards the proposed GBER amendment, we especially welcome that:

- Aid intensity for small enterprises was raised to 80%,
- Large enterprises were included in Article 20,
- Aid granted under article 20 and 20a is always deemed to have an incentive effect,
- Eligibility rules in Article 20 are clearly in lines with Interreg eligibility rules by referring to the Delegated Regulation 481/2014 and Articles 38 and 43 of the new draft Interreg Regulation. No additional restrictions compared to the current GBER were introduced,
- Unnecessary and confusing definitions in GBER Article 2 were deleted,
- Interreg can also cover activities in the fisheries, aquaculture and primary agriculture production sectors with the GBER, and
- Article 20a was introduced to addresses beneficiaries receiving small amounts of aid. This will be very useful especially when dealing with aid to third parties (e.g. training and services provided by cooperation projects to SMEs).

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<u>Article 20 Aid for costs incurred by undertakings participating in European Territorial Cooperation projects</u>

In order to make the proposed amendment of Article 20 as effective as possible in reducing burden for beneficiaries and authorities, please consider the following additional points:

1. Align aid intensities in Article 20 with Interreg co-financing rates

On a general note, the High Level Group on Simplification recommended in 2016 that ETC programmes should be completely exempted from the application of State aid rules given the low value of projects and taking into account the unlikely negative impact on trade and competition and the high administrative burden for programmes and beneficiaries.
Should this not be possible, Aid intensities in Article 20 should be as much in line with the reality of Interreg as possible. The need to undertake State aid assessments and assessments of undertakings in terms of sizes (small, medium, large) should be avoided as much as possible.
Article 20 proposes 65% aid intensity for large, 75% for medium and 80% for small enterprises. This is not in line with Article 106(4) of the (draft) Common Provisions Regulation for 2021-2027, which currently foresees a 70% ERDF co-financing rate for all project partners. In order to make Article 20 as useful as possible, it is therefore necessary to raise the maximum aid intensity for large undertakings to 70%. In this context, please note that the maximum co-financing rate for Interreg 2021-2027 has not been decided yet and could be higher. Maximum aid intensities in GBER Article 20 should in any case be in line with maximum co-financing rates in Interreg.
The current proposal would oblige to perform State aid assessments as well as assessments of the size of the undertaking for each project partner, adding further layers of complexity. The distinction between small, medium and large enterprises is very complex and costly, keeping in mind that there are Interreg projects with 20 and more project partners located in several Member States, It is difficult to define the status of each beneficiary without employing specialised legal experts. Managing authorities/Joint secretariats usually employ 5 to 20 persons and do not have capacities to perform such checks. For these reasons, these assessments would create heavy administrative burden and high costs. Raising the aid intensities for large enterprises to the maximum co-financing rate of Interreg would avoid the need for these assessments in most cases.
Also, please keep in mind that typical large enterprises in Interreg are universities, research institutes and municipalities engaging in regional development activities across borders. Giving a different co-financing rate to these beneficiaries (because of Article 20) would still result in an unfair treatment: A public university or municipality that in view of GBER is considered a large enterprise would get a lower co-financing rate compared to all other partners even though they are all working on the same cooperation project.

2. Clarify that own contributions by public authorities to match-fund the ERDF do not count towards aid intensity in Interreg projects

In the context of adjusting aid intensities in Article 20 to the reality of cooperation programmes, it is of crucial importance to clearly state that the use of own resources by public institutions participating in Interreg projects does not count as public contribution in the calculation of maximum aid intensity rates. Instead, own resources of public organisations are to be considered their own financial means allocated to them irrespective of their participation in an Interreg project.
Please note that Article 20 will not be applied by most public authorities if their own contribution is considered State aid. In Interreg, the vast majority of beneficiaries are public organisations acting as beneficiaries for the benefit of all cooperation partners. In case own contributions to a cooperation project would be considered public funds that count towards the maximum aid intensity, a public cooperation partner would need to mobilise private contributions to match public funds provided by an Interreg programme under Article 20. This scenario would be highly unrealistic for public organisations in an Interreg project given the public interest nature of Interreg projects. For a typical Interreg beneficiary coming from the public sector (municipality, university or similar) the current legislation and interpretation of state aid rules essentially makes it impossible to apply. They could receive the set ERDF, for example 70%. However, then the beneficiary would need to cover the remaining 30% of its own funding. This becomes impossible for public beneficiaries: their own funding is considered state aid and cannot be used; and public organisations also cannot expect to receive the funding from private organisations. It should also be kept in mind that many organisations (such as regional development agencies and universities) have public status in some Member States and private status in others. Considering own resources in the calculation of aid intensity under Article 20 would create unfair conditions for similar types of organisations by discriminating organisations regarded as public in their Member State against their private counterparts in other Member States.

3. Make sure that Article 20 does not specify any additional eligibility rules

Specification of eligibility of external expertise and services costs in Article 20(3) (making continuous or periodic activity, and usual operating costs such as routine tax consultancy services, regular legal services, or routine advertising ineligible under the GBER) should be dropped. This is an unnecessary duplication of legislation on eligibility covered by the Delegated Regulation (EU) No 481/2014 and Chapter V of the draft Interreg regulation 2021-2027. This specification of eligibility in the GBER poses the risk of discrepancy of rules and leaves room for interpretation. For this reason, paragraph 20(3) should be deleted.

<u>Article 20a Limited amounts to undertakings for participation in European Territorial Cooperation projects</u>

As regards the new Article 20a, we understand that this covers indirect beneficiaries (undertakings outside the partnership) as well as direct beneficiaries (project partners).

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1. Clarify that Article 20a does not require reporting or monitoring aid at the level of third parties or providing any information to third parties.

In order to make this provision effective, Aid granted under Article 20a should not fall under the reporting (Art. 11) and monitoring (Art. 12) requirements of the GBER and should not entail any information requirements to third parties. Member States should not be required to follow up on any aid granted under Article 20a. Otherwise there would still be high administrative burden of dealing with a high number of third parties receiving very small amounts of aid.
Please keep in mind that, for example, in a single cooperation project that provides training to 200 SMEs, the granting authority would still need to inform 200 SMEs on the requirements of the GBER (e.g., keeping the documentation for 10 years) and fulfil reporting and monitoring requirements for 200 SMEs located in many different Member States. In the context of Interreg, this is also very difficult to do as beneficiaries deliver business support across national borders (e.g., A Swedish managing authority grants ERDF to a German beneficiary. The German beneficiary then provides training to Danish SMEs). Considering the very low value of indirect aid to third parties granted through Interreg projects (below EUR 5 000 per undertaking in the vast majority of cases) the administrative burden linked to monitoring and reporting is not proportionate to the granted aid.

2. Make sure conditions laid down in GBER Chapter I, Article 5 (Transparency of Aid) do not apply to Article 20a.

Chapter I, Article 5 stipulates that the GBER shall only apply to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without any risk assessment.
In the case of Interreg projects providing aid to third parties, it is often difficult to calculate precisely and ex-ante the value of the trainings or services. Due to the pilot nature of cooperation projects, similar trainings or services are often not readily available on the market. In many cases it is possible to provide a good indication of the value of the trainings and services (for example based on somewhat comparable trainings or planned costs of the services), but precise ex-ante calculations of the aid per third party often do not seem possible.
To significantly reduce administrative burden, please consider including Aid under Article 20a in the list of aid that is considered transparent.

<u>Additional points</u>

1. Editorial note (1): it appears that Article 1(2)(f) should have the following wording: "points (166) to (185) are added:" The present version refers to point (182), which is a clerical mistake in our understanding.
2. Editorial note (2): please note that the wording used in the French version of Article 20a GBER is not clear in terms of granularity. The English version makes clear that the total amount of aid to third parties is assessed by undertaking (not exceeding EUR 20 000 per undertaking within the same project). In the French version it could be

understood that the total amount of aid to third parties per project must not exceed EUR 20 000 because of the use of the cumulative conjunction 'et' ('Le montant total des aides relevant du présent article octroyées par entreprise et par projet n'excède pas 20 000 EUR').

3. If possible, the requirement to publish each individual aid for beneficiaries active in primary agricultural production exceeding EUR 60 000 should be dropped for Interreg. Currently, aid exceeding EUR 500 000 has to be registered. The lower limit for agricultural production undertakings (EUR 60 000) would significantly increase registration requirements for some Interreg programmes. In this context, please note also that, due to the nature of the aid (agriculture), programmes would not be able to manage registration via already established procedures. To reduce administrative burden, additional reporting requirements, multiple reporting thresholds, and multiple reporting channels should be avoided.

Additional comments of Interreg Baltic Sea Region: Shortcoming of European Commission's databases in relation to GBER registration and reporting

1. Even though the regulation foresees for State aid in European Territorial Cooperation Programmes to be reported by the member state in which the Managing Authority is located the technical functions of the Commission databases do not provide sufficient technical possibilities for such reporting. One typical example making reporting difficult relates to reporting on aid schemes via SANI2. Reporting on aid schemes only allows the inclusion of data regarding one member state (e.g. Germany) where the MA is located. For other countries also covered by the Programme area such reporting and inclusion is not possible. An indication of those countries also concerned can only be done in the full text of the scheme. In the short description according to Annex II of the GBER this is not evident and only that description will be published by the Commission in the State aid case database. Besides, via SARI submitted annual reports cover only Germany and German eligible areas. Indication of aid recipients from other countries can only be done in the comment fields. This limits the possibility for statistical analysis of the data.

2. The Programme area of Interreg Baltic Sea Region also covers Norway. GBER exempted aid in Norway is managed via the EFTA Surveillance Authority. An exchange/recognition of schemes registered with the Commission or aid reported in the annual reports to the Commission does not happen. For this reason aid schemes need to be registered twice and reporting also needs to be done twice. This could be simplified.

3. In spite of various comments to the Commission's transparency register only little changes regarding article 9 GBER about the transparency requirements have been implemented. Annex III of GBER has not been reformulated. We would like to point out that in our opinion the Commissions working paper regarding the transparency register and the GBER should be better aligned. Rules to comply with the transparency requirements should be aligned. The working paper should not require stricter compliance beyond the GBER requirements (e.g. an extension of the GBER definition of

“single aid” in the working paper). Such alignment would help to ensure the legal certainty.

Finally, we would appreciate if the amendment to the regulation comes into force as soon as possible. An indicative timeline, more detailed than the one specified in the Roadmap (i.e. Q4), would be very welcomed.

We very much appreciate your time and consideration and remain available for further elaborations and clarifications if needed.