Joint position on the initiative on targeted modification of the General Block Exemption Regulation: extension to national funds combined with certain Union programmes

SEPTEMBER 2019

The two French National Promotional Banks and Institutions (NPBIs), Bpifrance and Caisse des Dépôts Group, very much welcome the initiative of the European Commission to introduce new categories of exemption under the GBER to facilitate the combination and the complementarity of national and European funding under the future InvestEU and Horizon Europe programmes. It should be noted at the outset that this revision should enter into force as soon as these programmes are launched to ensure a successful deployment from the very beginning.

Yet, Bpifrance and Caisse des Dépôts stress that this revision should not include new constraints that could hinder the setting up of projects of European interest without justification in the light of the objective of preserving a fair competition within the EU. More broadly, this revision should not lead to making the existing framework more complex, nor should it include definitions or concepts that are not consistent with other EU regulations or the reality on the ground.

Finally, Bpifrance and Caisse des Dépôts emphasize that this revision should also be an opportunity to respond to the main limits of the current regulation, including support for RDI and innovative companies.

PROPOSALS RELATED TO INVESTEU

1. Avoiding any definition which would not be aligned with InvestEU regulation and bring new constraints to its implementation (article 2)

Bpifrance and Caisse des Dépôts would like the definitions to be fully consistent with those set out in the InvestEU regulation and its implementing acts in order to ensure an effective implementation. For instance, the definition of small mid-caps (article 2, §185) adds constraints in terms of turnover and annual balance sheet that should be avoided since they bring legal uncertainty without being justified in the light of the objective of preserving a fair competition within the EU.

More broadly, any new definition hindering the implementation of instruments that have proven their effectiveness should be avoided. To cover all forms of innovation, the qualification of an enterprise as innovative should be based on alternative criteria set out in guidelines or terms of reference as it is the case for the InnovFin programme. Bpifrance and Caisse des Dépôts therefore recommend limiting the regulatory framework to the current definition of "*innovative enterprise*" (article 2, §80) and deleting the proposed definitions of "*innovative SME*" (article 2 §183) and "*innovative mid-cap*[1]" (article 2, §184).

<u>Proposal of amendments:</u>

- New §183 and §184 under article 2 (definitions of "innovative SME" and "innovative mid-cap") should be removed.

- §185 should be amended as follows:
(185) "small mid-cap ***companies****" means* ***entities employing*** ~~*a large enterprise with*~~ *up to 499 employees* ~~*and up to EUR 100 million annual turnover or EUR 86 million annual balance sheet which can be considered an autonomous enterprise as defined in Annex I*~~ **that are not SMEs**

2. <u>Clarifying common requirements for financial products supported by InvestEU (article 56e, §1)</u>

2.1 For loans: It is expected from the proposal that the interest rate should be higher than the generic mid-swap rate or the EURIBOR. It should be clear that this is assessed based on the 3-month EURIBOR rate whether loans have a fixed or floating interest rate.

2.2 For equity-type operations: Bpifrance and Caisse des Dépôts would like to point out that equity operations are most of the time supplemented by quasi-equity operations (for instance current-account or convertible bonds), which will be fully eligible under InvestEU. Whilst Bpifrance and Caisse des Dépôts agree that the participation acquired should correspond to the amount invested through equity operations, it should be clear that the latter may come along with quasi-equity operations. Furthermore, the exemption should include the financing taking the form of quasi-equity exclusively (without any pure-equity component / equity stake) since it is a common market practice which is required in some cases based on the level of risk.

<u>Proposal of amendments:</u>

1. The financing provided to the final beneficiaries under the financial product supported by the InvestEU Fund shall fulfil one of the following requirements:

(a) for loans with fixed interest rate, the interest rate shall be at least the ~~*generic mid-swap*~~ ***3-month EURIBOR swap*** *rate for the corresponding maturity and currency in which the loan is denominated. If this rate is not available, the interest rate shall be at least the interest rate of government bonds issued by the country which issues the currency in which the loan is denominated in;*

(b) for loans with floating interest rate, the interest rate shall be at least the ***3-month*** *EURIBOR or the corresponding IBOR rate for the corresponding maturity;*

(…)

*(d) for equity****-type operations, financing shall take the form of pure-equity, equity combined with quasi-equity, or quasi-equity;*** *the acquired equity stake shall correspond to the amount invested* ***through pure-equity operations;***

[1] It is also pointed out that this definition is not in line with the one applied for on-going programmes and confirmed by the Investment Guidelines of InvestEU (1,500 employees instead of 3,000).

3. **Clarifying provisions and increasing thresholds applicable to financing supporting SMEs, small or innovative mid-caps (article 56e, §11)**

First and foremost, the current wording suggests that paragraphs a) and b) are cumulative, which would be contradictory. It is recommended to clarify the link between paragraphs a) and b), the latter applying only in the case of funding granted to beneficiaries other than those listed under a).

Furthermore, it appears that conditions stated in §11 concern only a very limited number of operations that are carried out in the EU and bring a limited added value to the current framework. Although the 30-million-threshold set out under a) is to be welcome, Bpifrance and Caisse des Dépôts strongly regret that the list of beneficiaries is difficult to implement and does not meet market needs. The restricted scope under a) is especially problematic because the thresholds and the duration under b) appear to be very small. Depending on the type of operations they are indeed equivalent to operations today complying with CPR or de minimis. To illustrate:

- Bpifrance growth loans can go up to € 5m over 10 years, and 53% of financing granted are higher than € 500K. Under the "Green loan" programme helping SMEs and midcaps to go green, 55% of the production ranges from € 500k to € 3m, and practice shows that the most significant investment plans, and therefore the highest loan amounts, generate the most energy savings.
- Equity operations that could be guaranteed through Bpifrance under the InvestEU fund would range from € 500k to € 20m with average tickets between € 3m and € 15m.

In line with the scope of the future SME window, all SMEs and small mid-caps should be included under a) without any further conditions, while mid-caps beyond 499 employees could be covered only if they are innovative. Alternatively, it would be appropriate to increase the maximum financing amounts and impose no maximum duration under b).

4. **Extending the exemption applicable to aids for climate and environmental protection (article 56e, §5 and §9)**

Bpifrance and Caisse des Dépôts welcome the new exemptions under InvestEU applicable to aids for climate and environmental protection (§9) as well as investment aids for generation of energy from renewable energy sources (§5) even though the threshold of the latter (€ 30m) could usefully be aligned on the former (€ 50m).

However, Bpifrance and Caisse des Dépôts regret the limitation in article 56 §9 to categories of aid provided in articles 36 and 37 since it drastically reduces the scope of eligible investments on a key priority for the next programming period. It should cover a larger scale of aids for environmental protection (chapter III, section 8), especially investment aids for energy efficiency measures and projects in buildings (articles 38 and 39). This would enable the exemption of soft loans to SMEs and mid-caps for investments in equipment and industrial processes aiming at reducing the consumption of energy and raw materials hence reducing waste and supporting the production of eco-efficient products. It would also facilitate housing and social housing refurbishment schemes. Aids for environmental studies (article 49) could also be usefully encouraged in this context since they are used for any type of investments contributing to climate and environmental protection.

5. **Removing the restriction for experimental development projects led by large enterprises (Article 56e, §10)**

Bpifrance and Caisse des Dépôts would like to stress that aids for experimental development projects carried out by large companies do not distort competition and still present significant risks. They contribute to R&D and innovation objectives within the EU and should therefore not be excluded.

In addition, aid for process and organisational innovation and digitisation for SMEs should be extended to small mid-caps for alignment purposes with the InvestEU Regulation.

10. Aid for research, development, innovation and digitalisation shall comply with the following requirements:
(a) aid can be granted for:
(…)
(iii) experimental development; ~~for large enterprises, except for small mid-caps in assisted areas and innovative mid-caps, aid for experimental development may only be granted if the project goes beyond the state of the art in its industry in the EEA and the financing provided to the final beneficiary does not exceed the minimum necessary for the project to be sufficiently profitable;~~
(iv) process or organisational innovation for SMEs **and small mid-caps;**
(v) digitalisation for SMEs **and small mid-caps;**

6. Assessing any requirement of private participation in funds at project level

It stems from Caisse des Dépôts's and Bpifrance's experience that having a 30% requirement of private participation at the fund level can hinder the development of highly beneficial projects (e.g under EFSI, projects like Marguerite 2 or Connecting Europe Broadband Fund as the share of private sector investors into these funds is under the proposed threshold). More broadly, it should also be possible for implementing partners to guarantee public funds in duly justified cases for example in high risk research and innovation vehicles addressing markets with high policy value such as deep tech investments, but also in key policy objectives such as green investments or investments in enterprises weakened by an identified economic situation but preserving strong assets for the long term. As a consequence, Caisse des Dépôts and Bpifrance suggest that any minimum requirement of all investments made by private investors should be assessed at project level rather than fund level.

7. Additional general comments on a level playing field for all implementing partners

7.1 Under the EU compartment

As it stands, there would be a difference in treatment between the financial products implemented by the EIB Group or the IFIs and those implemented by NPBIs: the latter's contribution would be subject to State aid rules, while the former would be exempted. It should be agreed that any entity entrusted by the Commission for the indirect management of the European budget in accordance with the Financial Regulation should be subject to the same regulatory framework in order to ensure fair access to the InvestEU programme. This would be especially justified since the programme will then be implemented, for all implementing partners, under the conditions laid down in the InvestEU regulation and under the supervision of the Commission. The financial products would remain subject to the condition that they shall "not *distort competition in the internal market and be consistent with State aid rules*" under Article 209(2)(c) of the Financial Regulation.

7.2 Under the MS compartment

Bpifrance and Caisse des Dépôts welcome the application of new exemptions both to the "EU" and "Member State" compartments. This will facilitate the combination that the EU has been promoting since 2007 of structural funds with centrally-managed instruments. However, it seems from the proposal that the constraint that hindered the first attempts might remain: national actors would still need to comply with several sets of rules (at least InvestEU regulation and GBER, and CPR to some extent).

It is key for the effective deployment of the MS compartment that it presents the clear advantage of applying a single set of rules (InvestEU regulation) to the whole combined instrument. This should apply to the ESIF component as well as any voluntary co-financing from managing authorities or implementing partners. This would clearly encourage managing authorities to allocate resources to the MS compartment to finance risky projects with larger tickets than it could be done with ESIF resources managed under CPR.

To that end, Bpifrance and Caisse des Dépôts point out that:

- Within the current framework, structural funds allocated to an off-the-shelf product with no other condition than geographical allocation and implemented by the EIB Group or an IFI would not be considered as national resources; they would qualify as such in the event of greater specifications and/or implementation by a NPBI. Based on article 38 of the CPR and the State aid guidelines on financial instruments under ESIF for the 2014-2020 programming period, it should be recognised, regardless the implementing partner involved, that contributions from ESIF are not imputable to the State where the allocation is only geographical and therefore do not constitute state aid.
- More broadly, it would be worthful to clarify that, in the same way they are typically regarded as national on the basis of their local management, ESIF resources which would be allocated to InvestEU and consequently managed under central rules and governance (same as the one applied to EU compartment) should be considered European and therefore be exempted from state aid rules, notwithstanding the conditions of use required in the contribution and guarantee agreements as well as the implementation by a NPBI. The contrary could disincentivize managing authorities to contribute to the MS compartment.

PROPOSALS RELATED TO RDI PROJECTS (Seal of excellence and co-funded projects)

1. Extending the exemption of aid involved in co-funded projects to partnerships under article 185 & 187 of the TFEU

Bpifrance and Caisse des Dépôts welcome the exemption introduced by new article 25b for co-funded projects independently evaluated and selected following transnational calls launched under the Horizon Europe programme. This possibility should be extended to institutional partnerships based on articles 185 and 187 of the TFEU, such as Eurostars projects, since they are equally co-funded and have a clear supranational dimension (36 Eurostars members). The minimum level of funding provided by Horizon Europe should also be reduced to 25% for all types of research. For the same purpose, the doubling of the thresholds applicable to Eureka projects and partnerships based on articles 185 and 187 should also apply to projects co-funded under Horizon Europe.

Proposal of amendments:

Article 25b (new)

*1. Aid provided to co-funded projects independently evaluated and selected following transnational calls under the Horizon Europe programme, including under Teaming actions independently evaluated and selected following transnational calls under Horizon 2020 or the Horizon Europe programme, **as well as Eureka and Eurostars projects or projects implemented by a Joint Undertaking established on the basis of Article 185 or Article 187 of the treaty**, 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.*

(…)

*5. The funding provided by the Horizon Europe programme shall cover at least ~~30%~~ **25%** of the eligible costs for experimental development, ~~and at least 35% of the eligible costs for~~ fundamental research or industrial research.*

Article 4 1 i) iv) (in force)

*(iv) if the project is a Eureka project or is implemented by a Joint Undertaking established on the basis of Article 185 or of Article 187 of the Treaty, **or if the project is co-funded under the conditions laid down in article 25b**, the amounts referred to in points (i) to (iii) are doubled.*

2. **<u>Fostering the support to innovative SMEs with significant financial needs and long development cycles</u>**

Bpifrance and Caisse des Dépôts welcome the new derogation from "undertaking in difficulty scheme" of aids to SMEs under article 56e and aids to intermediaries under section 16 of chapter III (amended article 1), as well as the new exemption related to R&D projects awarded a Seal of Excellence quality label under Horizon 2020 or Horizon Europe (article 25a).

However, Bpifrance and Caisse des Dépôts would like to stress that the latter should be the opportunity to address the difficulty to finance "cash burner" companies invested in long-term R&D projects that are highly capital-intensive:

- Some companies entering the definition of "undertaking in difficulty" have positive cash flows and very good market prospects. This is the case of innovative companies, which generally invest significant amounts of resources in Research, development and innovation in comparison with their incomes and sometimes with long investment cycles (more than ten years for example in the biotech and microelectronics sectors). This imbalance ("losses" linked to huge expenses that reduce dramatically their own funds) is nevertheless inherent to the development model of innovative and capital-intensive companies, some of which are therefore excluded from the scope of the GBER and RDI aid eligibility. The GBER today provides a derogation for companies under five years to make them benefit from aid on the basis of the "start-up schemes" (article 1 §4 c) but this derogation has a weak impact in practice due to the 5-year-limitation and 800k threshold.

- Deep tech companies such as biotechnologies, artificial intelligence, microelectronics, nanomaterials, quantum computing and digital, since their business models are innately very capital-intensive. At first view, one can propose the following definition for "deep-tech":

> *"Deep-tech qualifies technologies or technologies combination:*
> 1. *Complex and strongly differentiated from existing technologies;*
> 2. *With very high entry barriers, explained by the extremely long period of technological development (RD) and often materialised by the intellectual property protection;*
> 3. *With a significant capital intensity because of long periods of industrialisation and/or commercialisation. Deep-techs generally come from public or private research laboratories."*

3. **<u>Using Technology Readiness Levels only where it is relevant (article 2, §83 to §86)</u>**

The integration of the equivalent Technology Readiness Levels (TRL) into the definitions of the categories of RDI projects (fundamental research, industrial research and experimental development) could usefully clarify the correspondence between the two classification systems that can be used at European and national levels for technological RDI projects. However, Bpifrance and Caisse des Dépôts stress that the TRL cannot be applied to all RDI projects, some of which is not based on technological developments (e.g. projects in the human and social sciences). It would therefore be useful to limit the use of the TRL scale to technological projects.

4. **<u>Additional comments</u>**

4.1 Expanding aids for start-ups to the companies under-seven

It is necessary to recognise companies under seven years as eligible to align all the age within the GBER, no matter the funding. In our opinion, it is insufficient to limit the start-up definition to enterprise under-five. In France, the "Jeunes entreprises innovantes" (young innovative companies) scheme supports companies under eight years, these companies still being considered as young and fragile. An innovative company needs much more than 5 years to stabilise itself and finds its growth path: it needs time to deal with administrative issues, the design of the technical project and eventually the preparation of industrial and commercial launch of the innovation. During this whole period, the company needs support till its first turnover be made and stabilised to achieve its innovative project, get finance and working capital, reinforce its treasury and prepare its fundraisings.

4.2 Extending the costs eligible to innovation aid for SMEs (article 28, §2)

We propose to update the article 28 §2 of the GBER by extending the costs eligible to innovation aid for SMEs as following. This would enhance the legal certainty and give more flexibility, acting in favour of the innovation funding for SMEs, by making clear that advanced innovative projects led by SMEs could be financed through this article, in particular technology demonstration.

Proposal of amendments:

"The eligible costs shall be the following:
a) costs for obtaining, validating and defending patents and other intangible assets;
b) costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;
c) costs for innovation advisory and support services;
*d**) costs for prototyping, miniaturization, scaling-up, design, performance verification, testing, demonstration, development of pilot lines, validation for market replication, including other activities aimed at bringing innovation to investment readiness and maturity for market take-up.**"*

4.3 Revising the definition of equity in the calculation method used to determine whether an undertaking is in difficulty:

4.3 Revising the definition of equity in the calculation method used to determine whether an undertaking is in difficulty: This would involve including quasi-equity such as shareholders' current accounts and bonds convertible into shares into the company's equity capital.

About Bpifrance
Bpifrance is the French public business bank supporting enterprises' access to funding from start-up to stock markets, by providing loans, guarantees and equity as well as enhanced backing for innovation, export, and external growth. Bpifrance total funding for companies in 2018 was € 29,7 bn.
With its 48 regional offices, it is a one-stop shop for entrepreneurs in each region. Bpifrance also plays an active part in the EU public debate and participates in the management of several European funding programs for companies (ERDF, InnovFin, Eurostars, EFSI etc.). Bpifrance is subject to the direct supervision of the European Central Bank. www.bpifrance.fr

About Caisse des Dépôts
Caisse des Dépôts (CDC) and its subsidiaries form a public long-term investor group serving the general interest and economic development of local areas. It combines five areas of expertise: pensions and professional training, asset management, monitoring subsidiaries and strategic shareholdings, business financing (with Bpifrance) and Banque des Territoires. http://www.caissedesdepots.fr/en