Targeted review of the General Block Exemption Regulation (State aid): extension to national funds combined with certain Union programmes

Interact Programme

To Whom it May Concern,

INTERACT is the platform of European Territorial Cooperation (ETC or 'Interreg') programmes. One of the objectives of the Interact programme is to support Interreg programmes in the simplification and harmonisation of their approaches to programme and project management.

Interreg programmes provide grants to co-finance cooperation projects across national borders. Decisions to co-finance cooperation projects are taken jointly by all Member States participating in a programme.

Our response below is based on inputs we received from Interreg programmes.

General opinion

Based on the input we received, Interreg programmes 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 refer to the Delegated Regulation 481/2014,
- 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).

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. 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.

2. 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 70% 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 beneficiary (because of Article 20) would still result in an unfair treatment: A university or municipality that is technically 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.

3. The requirement to publish each individual aid for beneficiaries active in primary agricultural production exceeding EUR 60 000 should be dropped for Interreg. In the current programming period, Interreg programmes were hardly able to finance participation of cooperation partners active in the primary agricultural sector due to restrictions in the GBER. Programmes therefore appreciate the proposed changes in the GBER and expect an increase in participation of suitable partners from this sector.

   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.

4. 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.

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

In order to make this provision as useful as possible, 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). In the context of Interreg, this is also very difficult 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).

Additional points

1. We propose to exempt Interreg from the definition of 'undertakings in difficulty'. In some programmes, a considerable number of applicants cannot receive any funding (neither State aid relevant nor non-State aid relevant) because Article 3.3(d) of Regulation 1301/2013 forbids granting ERDF to undertakings in difficulty, as defined under State aid rules. Some Interreg applicants are considered 'in difficulty' in accordance with the GBER definition even though their financial condition is good. On the other hand, there are beneficiaries that receive funds, but then go bankrupt in the course of project implementation even though they were not 'in difficulty' according to the current definition.

2. On an editorial note, 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.

Finally, programmes 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.