



Ministry of Economic Affairs
and Employment of Finland

European Commission
Directorate-General for Competition
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9.12.2021

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RE: HT.5934_Reply_from_a_public_authority, FINLAND

Dear Sir, Dear Madam,

Further to the Commission's request for contributions to the public consultation, Finland submits the following preliminary comments on the Commission's targeted review of the General Block Exemption Regulation 651/2014 concerning the revised rules for State aid promoting the green and digital transition. The comments are the result of consultations between competent ministries and subject to the approval of the Finnish legislature.

Yours faithfully,

Samuli Miettinen
Chief Specialist

Finnish comments re: HT.5934_Reply_from_a_public_authority, FINLAND, targeted revision of Regulation 651/2014 concerning the revised rules for State aid promoting the green and digital transition

Finland welcomes the Commission's initiative to simplify, clarify and develop the General Block Exemption Regulation for State Aid

Finland welcomes the Commission's proposals, which simplify and enhance the efficiency of state aid procedures in a targeted way. The proposal facilitates the disbursement of the recovery and resilience funds to achieve objectives consistent with the green deal and digital strategies. The proposal clarifies several concepts and criteria that have previously been difficult to interpret and is consistent with earlier proposals to the guidelines that concern individually notified aid in the relevant sectors.

State aid towards green deal objectives should be as technology-neutral as possible

State aid rules that facilitate the green deal and digital objectives should be as technology-neutral as possible given the current state of the market. Finland considers that the proposals could be improved in some respects. The entire life cycle of a product should be considered when assessing its environmental effects rather than emissions at a single point in this cycle such as the end of the pipe. Aid criteria should take into account the current state of the market, in particular where short-term solutions not ideal but are better than the status quo and currently available alternative. Aid to clean hydrogen other than renewable hydrogen should be possible in the current state of technological and market development. Finland considers that aid towards hydrogen should avoid specific criteria for its production given the current state of technological and market development. Infrastructure and vehicles using alternative fuels such as biogas should also be included within the scope of the exemptions. This is the case especially for heavy land transport, where few alternatives are offered on the market. Maritime transport state aid rules should not overemphasize emissions from the vehicle itself. The share of alternative fuels in maritime transport is very low (under 1% globally).

EU state aid rules should be aligned with sectoral secondary legislation and market practices

Finland invites the Commission to maintain parity between sectoral legislation and the GBER throughout the life cycle of the regulation. In particular, the regulation should be in line with developing EU energy regulation, EU rules on the rehabilitation of natural habitats and ecosystems and protection of biodiversity, and developing EU regulation on maritime transport. Finland welcomes the proposals that further align the Regulation with market practices particularly in the field of risk finance aid.

Fair competition must be protected where aid is exempt from notification

Finland considers that some aspects of the proposals risk distorting competition and that aid to such activities should not be exempt from individual notification under the Regulation. In principle only aid which does not give rise to undue distortions of competition should be exempt from ex ante review by the Commission. It should be noted that the shipbuilding sector is still suffering from structural overcapacity and even small aid amounts can cause competition distortions between the Member States. Regional aid to shipbuilding should therefore in the current market environment be assessed separately by the Commission under the Regional Aid Guidelines. Finland also considers that operating aid to prevent or reduce depopulation to sparsely populated areas should be subject to individual notification and not exempt under the GBER. The proposal to allow fiscal state aid to biofuels that are subject to a supply or blending obligation risks distorting competition. These should also be individually assessed.

Administrative burdens should be proportionate

Finland supports the aim of ensuring the efficiency of aid and the general requirement that measures are subject to competitive tender processes. However, it should be possible to grant limited amounts

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of aid without tenders in order to maintain competitive balance between large and small enterprises. This is especially necessary in the case of aid for cleaner vehicles as proposed in the definitions (Article 2, points 102 f and 102 g). Finland also considers that the sea transport sector is subject to similar concerns. Tenders can also risk favouring the most polluting undertakings and distort competition between small and large enterprises. Where fiscal aid rules are amended, changes should allow adequate transitional periods to ensure legal certainty.

Finland invites the Commission to revisit specific amendments

Some proposals to develop the definitions in Article 2 could be re-examined. Article 2(47a) as proposed sets too tight a deadline for completion (3 years from commencement) for energy projects, as delays are common. Finland invites the Commission to clarify whether this also concerns energy projects. It is also unclear why point 108b refers to “green” cogeneration if the requirement is defined as “100% renewable sources”. Finland considers that the definitions of ‘clean vehicle’ and ‘zero-emission vehicle’ under points 102(f) and 102(g) should include at least heavy vehicles using biofuels, because electric and hydrogen alternatives are not generally available in this segment. The Commission should align the proposal as regards maritime transport with its Fuel EU Maritime proposal rather than the taxonomy rules. Biofuel contributes to the circular economy and is environmentally friendly when evaluated on the basis of its whole life-cycle.

Certain proposals to allow regional aid risk distorting competition. Finland considers that aid to the shipbuilding industry risks increasing overcapacity and therefore risks distorting competition. It should therefore be assessed individually and not exempt as proposed under the revised Article 14. Finland has similar concerns and therefore does not support the extension of Article 15(3) to cover operating aid to sparsely populated areas.

The proposed changes to risk finance rules are generally appropriate. Finland would welcome minor modifications to allow both alternatives under Article 21(3)(b). Finland proposes to retain the original “new product or geographical markets” rather than the “new economic activity” concept proposed in Article 21(3)(c). Article 21(7) should be amended to better reflect market practice so that the shareholders can transfer shares between themselves without limitation. This reflects market practice which often requires departing key personnel to divest their shares to other shareholders and is also in the interests of external investors. Finland invites the Commission to clarify what is meant by “adequate” risk-reward sharing arrangements in Article 21(10). Finland also invites the Commission to consider revising the rules proposed in Article 21(17) so that they better reflect market practice. The proposed, unamended rules are difficult to apply in practice because different investment cycles can typically use different instruments (from debt/equity loan to equity investments). Therefore the rule as proposed would be applied to a marginal set of investments. The rules could instead be revised to apply to those situations where a fund’s predominant means of investment is not equity investments.

Finland would welcome amendment of Article 36(1a) to limit the review of hydrogen infrastructure to a reasonable period rather than the proposed entire economic lifetime of the investment, which is typically decades. Finland also invites the Commission to consider whether the combined requirements of present negative value and aid intensity of at most 20% of additional costs imposed under Article 36(2a)(b) and 36(6a) are so strict as to preclude investments.

Rules on aid to green transport could be further developed. Finland welcomes the possibility of investment aid to charging and refueling infrastructure. Article 36 a should allow aid to biogas refueling infrastructure. This is required especially in market segments such as heavy vehicles where alternatives are not widely available. Requirements to commission studies or public hearings on likely market developments within the next three years are unnecessary because investments and their potential for distortive effects are limited. Such predictions are also difficult to carry out accurately. The proposed presumption in Article 36(a)(10) where a type of vehicle represents respectively less than 2 % of the total number of vehicles of the same category registered in the Member State is of little use in practice. Article 36 b should allow aid to the most environmentally friendly alternatives that are available and

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not be limited to those which are not available or which distort competition by emphasizing emissions at the point of use. Biogas vehicles should be eligible for aid. Limited amounts of aid should also be permitted without a public tender in order to ensure competitive balance between large and small undertakings. The rules should also avoid procurement requirements in cases where objective procurement criteria are difficult to formulate in a given market or where the structure of the market, for example a small number of eligible undertakings, prevents an efficient outcome.

Finland welcomes the amendments to Article 41 and the simplification of eligible costs. Finland would welcome a clarification to the Article 41(1)(a) concept of when 'the storage investment fulfils the same conditions'.

Certain adjustments to the fiscal state aid rules are also proposed. Article 44 should not allow the combination of delivery and obligations with fiscal state aid. The proposed requirements for large enterprises (art. 44 (5) a or b) are difficult to put in practice in taxation and thus administratively heavy. Amendments to Article 44(5) should ensure that the rules are sufficiently predictable to provide legal certainty. Article 44 a focuses aid on those undertakings most affected by an environmental tax. Finland welcomes recognizing environmental tax measures in addition to energy tax measures but invites the Commission to clarify whether the effect on undertakings is defined in absolute or relative terms and whether turnover or some other criterion such as the power of the undertaking to pass on costs is the basis for comparison. The Commission should avoid exempting aid to those undertakings that have the most negative environmental impacts as this could focus aid measures inefficiently and encourage aid contrary to the objectives of the Green Deal. Finland also invites the Commission to clarify whether Article 44a(3) grants equal treatment to undertakings in the same in a same or similar factual or legal situation regarding the objectives of the reduction in the tax or levy.

Finland welcomes proposals to allow new forms of environmental aid, including aid to ecological restoration. However, Article 45 could be clarified to distinguish between different types of measures where they are subject to different aid intensities. Raising the aid intensity of both types of measures under Article 45(6) to 100% is preferable but Finland would also support a clearer differentiation between the two if they remain subject to different aid intensities. Finland also proposes that independent evaluations of added value should not be required in those cases where the land is removed from use and where aid measures therefore typically do not result in gains. This could be accomplished by treating those measures which aim to restore or rehabilitate habitats and ecosystems differently than measures which enable the further development of land. For all restoration measures the aid intensity should be calculated from the net cost of measures which accounts for any direct profits from those measures. Finland welcomes the extension of Article 47 to expressly cover resource efficiency and the circular economy. For this and other areas where hypothetical counterfactuals are required such as Article 36, Finland notes their application can be difficult in practice and would be open to alternative methods for calculating eligible costs. Finally, Finland would welcome the extension of Article 49 eligible costs to all studies rather than the proposed limitation under paragraph 2 to those elements that relate to eligible investments.

Finland supports amendments that clarify and simplify the current rules and further align them with market practices and EU objectives

Finland welcomes the efforts of the Commission to further align the GBER with market practice and the objectives of the green and digital transitions. Definitions (particularly Article 2, points 85 onward) which facilitate digitalization are broadly in line with these objectives. Finland would welcome a clarification of the relationship between the concept in Article 2, points 85 and 86. Finland supports excluding direct public investments as proposed under Article 21(2). Separating fiscal aid to private investors into a separate 21a Article clarifies the risk finance rules. Amendments supporting the purchase of intellectual property rights under Article 22(b)(6) reduces market failure vis-à-vis the present status quo, where private investment in early stage development remains limited. This can also be said of testing and experimentation infrastructure rules proposed in Article 26a, where the proposed aid in-

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tensity is appropriate and distortions of competition are limited by rules focusing the aid on investments, the requirement that its use carries a market price and that its use must be offered on a non-discriminatory basis. Finland also endorses the proposed clarifications to the definition of paragraph 3, point (e) , the proposed definition of innovation clusters (Article 26) and the proposed clarifications Article 28(c) to include services provided by research and knowledge dissemination organizations, research infrastructures, testing and experimentation infrastructures or innovation clusters. Proposed changes to Article 41 simplify the rules and lessen the administrative burden of prior notifications. Proposals to Article 46 also simplify the calculation of eligible costs. Finland welcomes the Commission's proposals to revise the General Block Exemption Regulation and looks forward to the continued constructive dialogue with the Commission and Member States.