

LATVIAN COMMENTS ON THE COMMISSION REGULATION AMENDING REGULATION (EU) NO 651/2014 DECLARING CERTAIN CATEGORIES OF AID COMPATIBLE WITH THE INTERNAL MARKET IN APPLICATION OF ARTICLES 107 AND 108 OF THE TREATY DRAFT (HEREAFTER – THE DRAFT REGULATION) (HT.5934)

No.	Place in the document text	Comments/Proposals
1.	<i>General comment</i>	The initial concept of the GBER regulation is to provide clear and easily applicable conditions. However, now it is required in several Articles (36., 36b, 38) to calculate the NPV and the NPV of the maintenance, repair, and modernisation costs etc. It would be necessary to provide guidance document so that aid grantors and beneficiaries can easily apply these specific provisions.
2.	<p><i>(7) Article 9</i></p> <p><i>(7) in Article 9, paragraph 1 is replaced by the following:</i></p> <p><i>“1. The Member State concerned shall ensure the publication on a comprehensive State aid website, at national or regional level of:</i></p> <p><i>(a) the summary information referred to in Article 11 in the standardised format laid down in Annex II or a link providing access to it;</i></p> <p><i>(b) the full text of each aid measure, as referred to in Article 11 or a link providing access to the full text;</i></p> <p><i>(c) the information referred to in Annex III on each individual aid award exceeding EUR 100 000, or for beneficiaries active in primary</i></p>	<p>Given that for transparency requirements some Member states do not have a comprehensive State aid website at a national or regional level and in this case Member states use the IT platform established by the European Commission (Transparency Award module), in order to ensure a common approach to transparency requirements in the State aid regulations we propose to use the wording, e.g., as in Temporary framework regulation <i>Article 103</i>:</p> <p><i>“1. The Member State concerned shall ensure the publication on a comprehensive State aid website, at national or regional level, or Commission’s IT tool of: [...]”</i></p>

	<i>agricultural production, other than those to which Section 2a applies, on each individual aid award for such production exceeding EUR 60 000 and for beneficiaries active in the fishery and aquaculture sector, other than those to which Section 2a applies, on each individual aid award exceeding EUR 30 000.</i>	
3.	<p><i>(9) Article 14</i></p> <p><i>6a. Costs related to the lease of tangible assets may be taken into account under the following conditions:</i></p> <p><i>[..]</i></p> <p><i>In the case of an initial investment as referred to in Article 2, point 49(b) or point 51(b), in principle only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. However, if a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets shall be bought from third parties unrelated to the buyer does not apply. The transaction shall take place under market conditions. If the acquisition of the assets of an establishment is accompanied by an additional investment eligible for regional</i></p>	<p>For clarification reason, please provide in the footnote definition/ clarification for the term “unrelated to the buyer”, taking into account the European Commission’s clarification for the definition "Unrelated parties" on the e-wiki platform: https://webgate.ec.europa.eu/fpfis/wikis/pages/viewpage.action?pageId=135382309</p> <p>In addition, it is not clear how in practice it will be possible to check that aid was not provided for the acquisition of assets prior to their purchase, for example, in another country? Why those assets should be deducted from the eligible costs? Considering that the buyer does not receive a double advantage, this specific condition lacks logic. From our perspective, all costs must be included in the eligible costs.</p>

	<i>aid, the eligible costs of that additional investment should be added to the cost of acquisition of the assets of the establishment. If aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment.”;</i>	
4.	<p><i>(9) Article 14</i></p> <p><i>Paragraph 7 is replaced by the following:</i></p> <p><i>“7. For aid awarded to large enterprises for a fundamental change in the production process, the eligible costs shall exceed the depreciation of the assets linked to the activity to be modernised over the preceding three fiscal years. For aid awarded for a diversification of an existing establishment, the eligible costs shall exceed by at least 200 % the book value of the reused assets, as registered in the fiscal year preceding the start of works.”;</i></p>	Latvian authorities kindly ask the European Commission to clearly state in the draft amendment that both conditions in Article 7 must be applied only to large enterprises. (for example, as it is explained on the e-wiki platform Art 14 (7) changes after the GBER amendment - e-State Aid Wiki - EC Extranet Wiki (europa.eu) (CZ question, COMP answer 2018.05.22)
5.	<p><i>(12) Article 21</i></p> <p><i>Paragraph 3. Eligible undertakings shall be undertakings that at the time of the initial risk finance investment are unlisted SMEs and fulfil at least one of the following conditions:</i></p>	Latvian authorities kindly ask the European Commission to clearly state in the draft amendment that the risk finance follow-on investments (provided all the conditions of Article 21.3. (a), (b), (c) are fulfilled) can be made in undertakings that have been unlisted at the time of the initial risk finance investment yet have become listed when the follow-on risk finance investment is made.

	<p><i>(a) they have not been operating in any market;</i></p> <p><i>(b) they have been operating in any market for less than 10 years following their registration and/or, in the case of innovative enterprises, seven years after their first commercial sale. For eligible undertakings that have taken over the activities of another enterprise or were formed through a merger, in which case the eligibility period also encompasses the operations of that enterprise or the merged companies. For eligible undertakings that are not subject to registration, the eligibility period is considered to start from either the moment when the enterprise starts its economic activity or the moment when it becomes liable to tax with regard to its economic activity, whichever is earlier;</i></p> <p><i>(c) they require an initial risk finance investment which, based on a business plan prepared in view of a new economic activity, is higher than 50 % of their average annual turnover in the preceding 5 years. Investments aimed at significantly improving the environmental performance of the activity in line with Article 36 (2) and other environmentally sustainable investments as</i></p>	
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	<i>defined in Article 2(1) of Regulation (EU) 2020/852 of the European Parliament and of the Council shall be considered new economic activities if their initial funding requirements are above [30 %] of the average annual turnover in the preceding 5 years.</i>	
6.	<p><i>(12) Article 21</i></p> <p><i>18. Risk finance measures providing risk finance investments for SMEs that do not fulfil the conditions laid down in paragraph 3 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 all the following conditions are met: (a) at the level of the SMEs, the aid fulfils the conditions laid down in Commission Regulation (EU) No 1407/2013*, Commission Regulation (EU) No 1408/2013** or Commission Regulation (EU) No 717/2014***, whichever is applicable;</i></p>	<p>In our opinion, it is not justified that compliance with the provisions of the de minimis regulations is required within the framework of Article 21 (18), thus indirectly changing the de minimis regulations, making it stricter in the case of risk financing. At the 07.12 Advisory meeting replying to Italy comment regarding this article, it was stated that the Commission had no intention to change nor the NOA nor the de minimis regulations. We kindly ask the Commission to review this paragraph.</p>
7.	<p><i>(13) Article 25 is amended as follows:</i></p> <p><i>(a) in paragraph 3, point (e) is replaced by the following:</i></p>	<p>The proposed flat rate (15%) by the Commission is significantly lower than the flat rate set in Article 35(1) of Regulation No 2021/695 (25%) while being comparable projects. Latvian authorities kindly ask the Commission to align the flat rate with Article 35(1) of Regulation No 2021/695 and set it up to 25 % instead of 15 %.</p>

	<p><i>“(e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project; without prejudice to Article 7(1) third sentence, indirect R&D project costs may also be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to [15 %], applied to total eligible direct R&D project costs. In this case, both categories of direct and indirect costs shall be established on the basis of normal accounting practices, shall comprise only eligible R&D project costs listed above in points (a) to (d), and shall be duly justified.”;</i></p>	
8.	<p><i>(23) Article 36.b</i></p> <p><i>7. Aid shall not be granted for the leasing of clean vehicles or zero-emission vehicles if the undertaking from which the vehicles are leased benefitted from aid for the purchase of the leased clean vehicles or zero-emission vehicles.</i></p>	<p>Please explain how in practice is possible to verify that <i>the undertaking from which the vehicles are leased benefitted from aid for the purchase of the leased clean vehicles or zero-emission vehicles</i> has not received support in another country. Considering that the undertaking which leases clean vehicles does not receive a double advantage, this specific condition lacks logic. From our perspective, all costs must be included in the eligible costs.</p>

9.	<p>(28) Article 41 Article 41 is amended as follows: (a) the title and paragraph 1 are replaced by the following: “Article 41 Investment aid for the promotion of energy from renewable sources, renewable hydrogen and high-efficiency cogeneration</p> <p>(e) paragraphs 5, 6 and 7 are replaced by the following: “5. The investment aid shall be granted in respect of newly installed or refurbished capacities. The aid amount shall be independent from the output.”</p>	<p>The paragraph 5 of the Article 41 of Regulation No 651/2014 is amended with the following: “The investment aid shall be granted in respect of newly installed or refurbished capacities. The aid amount shall be independent from the output.” At the same time, the amendment of Regulation No 651/2014 does not contain neither definition nor explanation of the essence of wording “newly installed” or “refurbished capacities”. It is not clear whether in both cases capacities can be built from used materials and components. To avoid incorrect interpretation, it is necessary to provide a definition for terms “newly installed capacity” and “refurbished capacity”.</p>
10.	<p>(29) Article 42 “11. Aid shall only be granted until the plant generating the electricity from renewable sources has been fully depreciated in accordance with generally accepted accounting principles. Any investment aid received shall be deducted from the operating aid.”</p>	<p>The paragraph 11 of the Article 42 of Regulation No 651/2014 is amended with the following: “Aid shall only be granted until the plant generating the electricity from renewable sources has been fully depreciated in accordance with generally accepted accounting principles. Any investment aid received shall be deducted from the operating aid.” Latvian authorities kindly ask the European Commission to clearly state in the draft amendment, whether the operating aid shall be granted until the plant building has been fully depreciated as well.</p>
11.	<p>(35) Article 48 Investment aid for energy infrastructure</p>	<p>The Article 48 of Regulation No 651/2014 is amended, and therefore it shall be clarified in the footnote whether the investment aid for natural gas infrastructure cannot be granted according to Article 48.</p>

12.		<i>Technical comment.</i> Please review the translation of the document into Latvian, for example, the definitions (109) “renewable energy” (in Latvian “atjaunīgā enerģija”) and (109.a) “renewable energy community” (in Latvian “atjaunīgās enerģijas kopiena”) in Directive (EU) 2018/2001 is translated into Latvian as “atjaunojamā enerģija” and “atjaunojamās enerģijas kopiena”
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