

## **Malta position on the draft Commission Regulation amending the General Block Exemption Regulation**

Reference is made to the draft *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* and the 1<sup>st</sup> Advisory Committee Meeting on a targeted revision of the General Block Exemption Regulation (GBER) held on 7 December 2021.

The proposed targeted changes to the GBER are generally welcomed as they put forward pragmatic solutions during the current challenging times.

Further to the comments already made by Malta during the Advisory Committee Meeting, the Maltese Authorities would like to submit the following points for the Commission's consideration.

### **Aid for Environmental Protection and Energy**

#### **Article 36a**

The inclusion in Article 36a of aid for recharging and refuelling infrastructure that is not publicly accessible is welcomed. The private sector alone might not be in a position to ensure an adequate distribution of public charging infrastructure points in all the places, or it might deploy such an infrastructure with a significant cost markup which would have to be borne by the consumer. The latter may eventually discourage the take-up of electric vehicles.

#### **Article 36b**

Article 36b (3)(a) states that “*The eligible costs shall be the following:*

*(a) for investments consisting in the purchase of clean vehicles or zero-emission vehicles, the extra investment costs of purchasing the clean vehicle or the zero-emission vehicle shall be eligible costs. Those shall be calculated as the difference between the investment costs of purchasing the clean vehicle or the zero-emission vehicle and the investment costs of purchasing a vehicle of the same category that complies with Union standards and would have been acquired without the aid;”*

The use of the term “*same category*” might be misleading as some categories include a wide range of vehicles. It is believed that the vehicle should at least provide an equivalent functionality.

Article 36b (4) states that aid must be granted in a competitive bidding process. This approach would surely be limiting with regards to small operators and undertakings. Another option would be to consider the possibility to grant a limited amount of aid (possibly at a lower aid intensity) per undertaking over a specific time period, rather than having to launch a competitive bidding process.

Alternatively, the Commission could consider imposing this condition only for undertakings engaged in the provision of road transport services for hire or reward. The investment in clean vehicles or zero-emission vehicles and for the retrofitting of vehicles by undertakings operating in other sectors should not be tied to a competitive bidding process.

### Article 38

The proposed point 3(e) requires that for “*all situations listed under (a) to (d), the counterfactual shall correspond to an investment with the same output capacity and economic lifetime that complies with applicable Union Standards*”.

In practice it may not be technically possible or viable to consider an investment which has the same output capacity and therefore the text should allow for variations whilst indicating how such variations can be accounted for, such as for example, by considering only a proportion of the new investment “equivalent” to the output capacity of the counterfactual. Alternatively, an adjustment as certified by an auditor should be allowed.

Similarly, when the economic lifetime is not equivalent, the depreciation of the new equipment to the extent of the expected economic lifetime of the counterfactual should be considered.

### Article 41

The new paragraph (1a) proposes that “*the storage investment shall have as a maximum the same capacity as the connected renewable investment*”. Battery storage is typically rated in Ah, or alternatively through a combination of kW (rated power) and kWh (units of energy which it can store). Prevalent technology would have a roughly fixed ratio between power rating (kW) and the amount of energy it can store (kWh), and the latter would need to be optimized according to the type of renewable energy generation, its capacity factor, and consumption profile. It would therefore be counterproductive for this provision to limit *a priori* the “capacity of the storage” and therefore it is being suggested to delete this constraint.

### Article 42

The proposal seeks to amend Article 42(2) and includes the requirement that “*Those criteria shall be published at least 6 weeks in advance of the deadline for submitting applications*”.

The Maltese Authorities believe that this period is deemed to be too short and should be extended.

It is noted that whilst Article 42(11) is being proposed to be amended, the requirement that “*any investment aid received shall be deducted from the operating aid*” has been retained.

Investors are often encouraged to benefit from schemes which reduce their cost of finance, or else to obtain other value streams (such as the sale of guarantees of origin). Assuming that such opportunities are open to all eligible investors within the national territory, one could reasonably assume that bidders would already factor such benefits when submitting their bid. It is therefore recommended that the requirement to deduct investment aid from operating aid, should not be applicable if aid is awarded through a competitive bidding process.

### Article 43

Whilst the draft proposal does not include an amendment to Article 43(6), the current text may benefit from simplification. It is therefore being suggested that the maximum rate of return is pegged to easily obtainable financial indicators such as, for example the return on five-year or

ten-year Government bonds plus a standard premium to reflect the sectoral risk, or 400pp in case of investors with no official credit rating.

#### Article 45

The broadening of the scope of Article 45 by introducing compatibility conditions for investment aid for the rehabilitation of natural habitats and ecosystems, the protection and restoration of biodiversity and nature-based solutions for climate change adaptation and mitigation, is seen as a positive measure.

However it would be useful to specifically mention cultural heritage in this Article, rather than it being limited to natural habitats and ecosystems, as cultural heritage is also threatened by climate change.

#### Article 47

Article 47(6) states that: *“The investment shall go beyond economically profitable or established commercial practices that are generally applied throughout the Union and across technologies. From a technological perspective, the investment should lead to a higher degree of recyclability or to a higher quality of the recycled material as compared to normal practice”*.

Clarification is required as to what ‘beyond economically profitable’ means.

It is believed that the investment should only generate a profit as an indirect benefit and such economic gain should be factored in the aid intensity.

### **Risk Finance aid**

The changes concerning risk finance aid in Article 21(2) as well as in Article 21a are welcomed.

### **Aid for Research Development & Innovation**

The clarification in paragraphs (85) and (86) of Article 1 that ‘industrial research’ and ‘experimental development’ include digital products, processes or services, in any area, technology, industry or sector is welcomed; however it would be ideal to provide further clarifications and examples of what constitutes industrial research or experimental development in terms of these clarifications. In most cases, one could refer to the OECD’s Frascati manual, yet this might not be sufficiently clear in terms of digital technologies.

The Commission may wish to address this by including further information in an updated practical guidance document.

For example, it is not clear whether experimental development includes the customization of readily available solutions or the development of a solution based on multiple platforms using readily available interoperability modules (bots etc.) if there is some uncertainty on how the

different components will be integrated, yet there is knowledge that the required result can be achieved.

The terms ‘innovation advisory services’ and ‘innovation support services’ are defined in Article 1 paragraphs (94) and (95) as follows:

*(94) ‘innovation advisory services’ means consultancy, assistance and training in the fields of knowledge transfer, acquisition, protection and exploitation of intangible assets or the use of standards and regulations embedding them, as well as consultancy, assistance or training on the introduction or use of innovative technologies and solutions (including digital technologies and solutions);*

*(95) ‘innovation support services’ means the provision of office space, data banks, libraries, market research, laboratories, quality labelling, testing and certification or other related services, including those services provided by research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters, for the purpose of developing more effective or technologically advanced products, processes or services, including the implementation of innovative technologies and solutions (including digital technologies and solutions);*

The concept of innovation has been given different interpretations. To this end, we believe that it should be clarified whether the term ‘innovation’ referred to in the above definitions, addresses innovation at the global, community, national, regional or undertaking level.

Furthermore, clarification is required as to whether the inclusion of solutions (including digital technologies and solutions) means that consultancy and assistance for innovation advisory services could include software development. Clarity is also required with regards to whether this includes readily available off the shelf solutions.

Clarity is also required with regards to what is meant by the provision of office space in relation to ‘innovation support services’.

Specifically on the definition of ‘innovation support services’, would this term also include the design of data systems, processes and IT solutions? Would the actual development and implementation be also included as an eligible cost?

Article 1 defines the terms ‘organisational innovation’ and ‘process innovation’ as follows:

*(96) ‘organisational innovation’ means the implementation of a new organisational method in an undertaking’s business practices, workplace organisation or external relations, for instance by making use of novel or innovative digital technologies. Excluded from this definition are changes that are based on organisational methods already in use in the undertaking, changes in management strategy, mergers and acquisitions, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products.*

*(97) ‘process innovation’ means the implementation of a new or significantly improved production or delivery method, including significant changes in techniques, equipment or software, for instance by making use of novel or innovative digital technologies. Excluded from*

*this definition are minor changes or improvements, increases in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products;*

Clarification is required as to whether software development costs could be considered as an eligible cost if they are required to implement and/or assist the organisational innovation/process innovation. A similar query arises with regards to the procurement, customization and installation of an off the shelf software if it supports organisational innovation/process innovation.

### Digitalisation

The proposed inclusion of Digital Innovation Hubs in the definition of the term ‘innovation clusters’ is welcomed.

In the current General Block Exemption Regulation, there is no specific article for digitalisation. Therefore, it appears that any State aid scheme targeting digitalisation can only be issued under either *Article 14 – Regional Investment Aid* or *Article 17 – Investment Aid to SMEs*, which will make such schemes highly unattractive to potential applicants in view of eligibility in the first scenario and extremely low rates and exclusion of large enterprises in the latter.

It is believed that a new article should be included in the GBER which will be targeted specifically towards the digitalisation of private enterprises. Such an article would allow an aid intensity of 30% for large enterprise which will increase by 10% for medium-sized enterprises and a further 10% for small enterprises.

### Regional aid

It is noted that the definition of ‘initial investment’ in Article 1 (49) with regards to a fundamental change in the overall production process, has been amended to clarify that the overall production process refers to the “*product(s) or the overall provision of the service(s) concerned by the investment*” in the establishment.

It would be appreciated if the Commission could kindly clarify the rationale and implications of the proposed change.

### Other points:

#### Threshold for publication - Transparency

Article 9 (1)(c) is being proposed to be reworded as follows:

*“the information referred to in Annex III on each individual aid award exceeding EUR 100 000, or for beneficiaries active in primary 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.”*

The Maltese Authorities believe that the costs of executing this major change by far exceed the benefit of publishing individual aid awards that exceed a certain threshold. The reasoning behind lowering this threshold is not clear. The additional bureaucratic burden brought about by such amendment would be detrimental to the aim to facilitate State aid procedures, and raises the question of proportionality.

Moreover, it is believed that €100,000 is a very low threshold which could imply that most individual aid awards will be included, ending up with an unduly long report. There could therefore be a risk that the original objective to highlight the attention on the bigger State aid transactions will now end up diluted in a lengthy report which covers virtually the majority of awards.

#### Undertakings in difficulty

The experience from the COVID-19 pandemic has taught us that the current rules provide insufficient legal certainty in relation to this legal term. In this regard, the European Commission is urged to provide greater clarity of this term, not only in relation to SMEs.

#### Article 17 – Investment Aid to SMEs

During the COVID-19 outbreak, a large number of SMEs experienced huge losses which resulted in a lack of liquidity. This has hindered SMEs from investing in their enterprise. The lack of liquidity combined with the huge losses experienced make the granting of aid as a crucial aspect for SMEs to invest.

Article 17(6) identifies that the aid intensity shall not exceed 20% of the eligible costs in the case of small enterprises and 10% of the eligible costs in the case of medium-sized enterprises. Schemes with these intensities are not sufficiently attractive to counterbalance the administrative burden involved. This could lead enterprises to keep postponing essential investments to adapt to the new post-COVID environment.

In order to make aid granted under Article 17 more attractive to SMEs, it is being proposed that the aid intensities are increased as follows:

- (a) 30% of the eligible costs in the case of small enterprises;
- (b) 20% of the eligible costs in the case of medium-sized enterprises.

Such an adaptation to the current rules to reflect the new reality is unfortunately missing in this targeted review of the GBER, and it should therefore be addressed.

Furthermore, Article 17(3) outlines the criteria when an investment would be considered as an eligible cost. Whilst the definition of ‘initial investment’ for the purposes of regional investment aid (Article 1(49)), also mentions services, Article 17(3)(a) only refers to products. It is believed that reference to services should also be made in Article 17(3)(a).

The Maltese Authorities trust that Malta’s submission will be taken into account in the ongoing discussions on the amended General Block Exemption Regulation. We remain available for further discussions regarding the points raised.