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Reference Nr: HT.5934

Vienna, 26 November 2021

Position Paper of the Federation of Austrian Industries on the "Revision of the General Block Exemption Regulation" (GBER) – State Aid

Subject: Targeted review of the General Block Exemption Regulation (State aid): revised rules for State aid promoting the green and digital transition.

The objective of the proposed revision of the General Block Exemption Regulation (GBER) is to further facilitate the implementation of aid measures to support the green and digital transition for member states in the following areas without prior notification and approval by the Commission: regional aid, risk finance aid, research, development and innovation aid ("RDI aid"), aid for environmental protection and energy aid.

The Federation of Austrian Industries (IV) would like to express its gratitude for the opportunity to comment on the present draft revision of the General Block Exemption Regulation (GBER) and welcomes in principle the extensions planned with the draft, which are necessary for triggering comprehensive investments to achieve the goals of the Green Deal or the Fit for 55 package.

General comments on the present amendment to the GBER

Ad) Environmental and energy aid

The **Federation of Austrian Industries welcomes** in principle the present draft regarding "environmental and energy aid" and the associated **extension of the scope of application of the GBER, the extension of the range of exempted aid measures, as well as the increase of the notification thresholds for climate, energy and environmental aid.** State aid will be an important building block of a corresponding range of financial support mechanisms, which in turn must be part of a comprehensive mix of instruments for decarbonisation if we are to achieve the ambitious climate targets at both European and national level.

In particular, the amendments **to increase the cap for environmental funding without notification from EUR 15 million to EUR 20 million**, as well as the possibility that the funding gap can also be funded up to **100% in the future**, if it is a competitive procedure, are **expressly supported by the IV**. We also welcome the inclusion of the circular economy.

With regard to "environmental and energy subsidies" we would like to point out, however, that the regulations in question must not distort competition. Furthermore, the **chosen approach to the promotion of renewable energies should be balanced as well as open to technology, as the use of all renewable energies is necessary to achieve the climate targets**. In addition, the contents of this regulation should also be applied to **large companies** and they should not be excluded from subsidies.

Ad) Research, development and innovation aid ("RDI aid")

In principle, the Federation of Austrian Industries very much welcomes the introduction of the new **aid category "testing and experimentation infrastructure"** (also referred to as "technology infrastructures"), as this would create – in addition to research infrastructures – technology infrastructures for the economic activities of companies and, above all, could also provide an appropriate R&D funding basis for necessary large transformation projects. However, the **non-discriminatory access** envisaged in the draft is **unrealistic** for such infrastructures and is viewed critically.

In detail

Ad) Art. 2 pt. 102c & 102e – Definition of renewable hydrogen / Art 36. a Exemption of investment aid for recharging and refuelling infrastructure

The exemption of investment aid for recharging and refuelling infrastructure is welcomed in principle by the Federation of Austrian Industries. What is problematic is the definition of renewable hydrogen in this context: According to Art 2 pt. 102c of the draft, this includes "hydrogen produced exclusively from renewable energy sources in accordance with [Reference to delegated act by DG ENER pursuant to Article 28 of the RED II]". **This is problematic from IV's perspective insofar as reference is made here to a delegated act that has not yet been published nor is in force. The provision thus leads to considerable legal uncertainty.**

The definition of low-carbon hydrogen in Art 2 pt. 102e is also significant. Here, too, it will be difficult for operators or suppliers of hydrogen to fulfil this condition and provide such proof.

According to the current draft, the carbon content of the marginal generation unit would have to be used for electricity-based hydrogen. The marginal generation unit is the plant with the most expensive price in the electricity auction (merit order list). This is therefore the most expensive plant that is in operation in the individual quarter hours in the bidding zone Austria when the electrolysis plant is running.

Unfortunately, we do not have data on which marginal generation units this has applied to in Austria recently. Nevertheless, on average over the year, marginal generation units are generally fossil fuelled (in Austria, for example, from natural gas). If the electrolysis plant is only operated at certain hours, for example when the electricity load is low and generation from renewable energy high at the same time, then it may be possible to fulfil this condition. However, it is assumed that the electrolysis plant is in

operation 24/7. Thus, it will not be possible to prove such a saving (73.4%) based on CO₂ emissions from the marginal generation units.

One solution would be to use the guarantees of origin (electricity disclosure) to determine low-carbon hydrogen.

Ad) Art. 2 pt. 102f & g – Definition of "clean vehicle" / Art 36. b Exemption of investment aid for clean and zero-emission vehicles

In principle, the introduction of a specific exemption category for investment aid for clean or emission-free vehicles is seen as positive. However, it seems questionable why reference is made here to the original version of the Clean Vehicles Directive (CVD) and not to the amended CVD (see Art 2 pt. 102f and g). A clarification in the interest of legal certainty would be desirable here.

Ad) Art. 4 pt. 1, j a): Investment aid for testing and experimentation infrastructures

Considering the necessary costs for technology infrastructures, which are of enormous importance for the implementation of the goals of the Green Deal and the double transformation required for it, the notification threshold of EUR 15 million appears too low and should therefore be significantly increased.

Ad) Art 9: "Publication and information"

In view of the EC's aim to focus the EU on large competition-distorting subsidies and reduce bureaucracy, the transparency threshold should not be lowered to EUR 100,000, but should be retained as currently regulated.

Ad) Art 25: "Indirect R&D costs"

The simplified cost options (indirect costs, 15%) are supported, however – in the interest of simplification and equal treatment of funding recipients and to avoid considerable additional expenditure – the limit should be aligned with the usual limit of 25% in the framework of the European Research Framework Programme.

Ad) Recital 2, pt 98a and Art. 26a: "Investment aid for testing and experimentation infrastructure"

The introduction of this **new aid category** is **very welcome** in principle, but should – as in the draft of the current union framework for state aid for research, development and innovation – include technology infrastructure. Testing and experimentation infrastructures (also referred to as technology infrastructures), in contrast to research infrastructures, are to be used primarily for economic activities and specifically for the provision of services to businesses and can be of **enormous importance for the realisation of implementation projects**, essential for the achievement of the Twin transition.

However, **non-discriminatory access is unrealistic** for such infrastructures. For companies that are currently in the **phase of a production transition** or the **construction of pilot plants**, **open use is not feasible** – especially in view of an aid intensity of 25%. The **new aid category** in the **current draft version** is thus **unattractive for companies** and **not suitable for ambitious implementation projects** ("upscaling") in the corporate group, which are essential for the major transformations to achieve the goals of the Green Deal, among others. Rather, it can be assumed that the new aid category in the current draft version will again only be of use to and used by (in addition to the aid category for research infrastructures) research

institutions. It seems appropriate to provide for a **differentiation of aid intensities depending on the use of the testing and experimentation infrastructure**. Therefore, it should be integrated into the revision of the present draft that, **if only one user uses the infrastructure**, aid intensity may not exceed **25%** and **if several users have access, aid intensity may not exceed 50%**. In addition, personnel costs incurred should also be included as eligible costs.

Ad) Art. 36 (1a): Investment aid for environmental protection including climate protection

The exclusion of investments in equipment, machinery and industrial production using fossil fuels in Art 36 1a is viewed critically by the Federation of Austrian Industries.

Ad) Art. 41 (3) Consideration of investment aid in the field of hydrogen

The exemption of investment aid for the production of renewable hydrogen from the notification requirement pursuant to Art. 108(3) TFEU is to be welcomed.

According to the present draft, investment aid can also cover dedicated infrastructure for the transmission or distribution of renewable hydrogen as well as storage facilities for renewable hydrogen. This is problematic insofar as the infrastructure must also be available to other forms of gaseous energy carriers in a technology-neutral manner, both for imports and for intra-European production. A delimitation of aid to the conversion of infrastructure plants with regard to use solely by renewable hydrogen appears difficult to implement in an EU internal market. Therefore, the exemption from the notification requirement for subsidies that serve the conversion or new construction of infrastructure facilities for the transport and storage of hydrogen should not be based solely on renewable hydrogen.

Ad) Art. 41 Aid intensity for renewable energy and renewable hydrogen

We welcome that, according to Article 41, the total investment costs (instead of the additional investment costs) are eligible for aid, as this allows the different investment cost structures of the new technologies (e.g. in the hydrogen sector) to be taken into account compared to conventional fossil generation plants (steam reformer). We also welcome that the previous aid intensity of 45% (30% + 15%) can be maintained for the exclusive use of renewable energy sources. However, it should be noted that for a ramp-up of renewable hydrogen, it is becoming increasingly clear that operating aid will also be necessary. Therefore, the admissibility of a possible combination of CAPEX and OPEX subsidies is essential.

We request that our comments be taken into account and remain yours faithfully

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