Stockholm 7 December 2021

The Confederation of Swedish Enterprise's views on proposed changes to the General State Aid Block Exemption (GBER) to support green and digital transition

The Confederation of Swedish Enterprise would like to express its gratitude for the opportunity to comment on the current proposals and would therefore like to state the following.

General comments

Swedish Enterprise would like to begin by emphasising the significance of GBER. According to data from the European Commission, approximately 97 per cent of all new support measures are implemented under the auspices of GBER. The acquis establish the framework for member states' scope to stimulate green investment and the adoption of tax measures to enable the combination of an ambitious climate policy and continued competitiveness for European business. They should avoid creating competition distortions between companies from different member states and ensure that aid is allocated to appropriate types of investment. This should result in investment that would not otherwise have been made and where additional private investment is created as a result of aid, rather than being squeezed out. This must also be done with the greatest possible degree of predictability and legal certainty for the companies involved, and with the least possible administrative costs.

Swedish Enterprise sees no reason that more than 97 per cent of support measures are implemented under GBER. It is important that the rules continue to set a clear and strict framework for support measures taken by member states. State aid often leads to distortions in competition, which can damage the market's natural mechanisms that drive increased efficiency and innovation in the longer term. State aid is seldom evaluated sufficiently thoroughly, and knowledge of the effectiveness of aid is often lacking as a result. Swedish Enterprise therefore advocates measures that support all companies through, for example, reduced costs, improved regulation, and investment in better education and general infrastructure. Such measures typically do not distort the market and can result in lasting positive effects for business.

The Commission's proposed changes to GBER are based largely on its own decision-making praxis. To the extent that this relates to aid that, following a request, the Commission would still have approved an extension of GBER does not necessarily mean that more aid will be granted. Rather, it results in a reduced administrative burden for authorities and for companies granted support. This is welcome because notification processes are generally lengthy and place considerable demands on companies to produce and submit a variety of information. At the same time, this must be balanced against companies being allowed to take greater responsibility for assessing whether authorities have correctly interpretated

GBER applications. It has become clear in the legal praxis of the Court of Justice of the European Union, (C-349/17, Eesti Pagar v Ettevõtluse Arenda mise Sihtasutus), that companies cannot rely on good faith if the granting authority has failed to apply the rules correctly. In such cases, aid risks being defined as illegal, with beneficiaries required to repay aid with interest.

In addition, it is necessary to update GBER so as to ensure continued compliance with relevant state aid guidelines and frameworks.

Overall, Swedish Enterprise believes that the focus on the Commission's proposed updating of the regulations is reasonable, subject to the comments below.

Article 9 Transparency

Article 9 includes the proposal to reduce the limit for when so-called transparency requirements apply from EUR 500,000 to EUR 100,000. This will dramatically increase the number of aid decisions in which applicants will be required to submit certain information to the publicly accessible database provided by the Commission within six months from the date of the decision. This may add to companies' administrative burdens to a certain degree. However, most of this sort of information would still need to be sent to authorities reviewing submissions. This will primarily be an additional burden for the authorities to handle, especially those that deal with large numbers of aid requests and that have not yet automated procedures for submitting such information.

Swedish Enterprise is generally in favour of increased transparency and opportunities to review aid granted within the Union on an individual basis and more generally. Currently, there are a number of ways to ascertain what aid is granted; although with all such support being flawed in different ways, it is difficult to establish a reliable knowledge base. Even with a lower threshold, there are shortcomings that mean that a solid overall knowledge base that describes aid granted and paid out in the Union does not exist. Furthermore, the Commission's database has not been very user-friendly to date. It would have been helpful if the Commission had presented an evaluation of the current transparency rules and database in terms of design, data uploaded, and how the database has been used. Lastly, Swedish Enterprise is of the opinion that the Commission should strive to establish a uniform system where legal documentation such as Commission decisions, aid granted and paid can be accessed in one place for all aid granted and all aid schemes.

Article 13-15 Regional aid

The synthetic fibre industry no longer appears to be excluded from receiving regional aid. Swedish Enterprise questions the background to this change and requests an impact assessment into why this change is justified.

It is proposed to make aid available to prevent or reduce depopulation even in sparsely populated areas (which has so far only been possible in very sparsely populated areas). Here, too, Swedish Enterprise questions the reason and what consequences this may have. Aid typically takes the form of support that risks leading to significant distortions in competition. Swedish Enterprise is therefore opposed in principle to this type of support being extended further.

Article 36a Investment support for charging and fuelling infrastructure

The name of this article is incorrectly translated in the Swedish, resulting in it having the same name as Article 26a. The correct name should be *Investment support for charging or fuelling infrastructure*.

The proposed article becomes unnecessarily limited in paragraph 7 where infrastructure that is open to others than the beneficiary or beneficiaries must in practice be open to the public to be eligible for aid. It may be relevant to restrict access in different contexts to another group of actors, and the important thing in this context should be that access takes place on non-discriminatory terms. Thus, for example, charging at logistics terminals, bus depots and ports may be included.

Article 41 Investment aid to support the use of renewable sources energy sources, renewable hydrogen and high-efficiency cogeneration

The provisions on aid for hydrogen seem to be too limited, as in practice they will primarily be directed at electricity producers. Entities other than electricity producers may need to produce, store and use hydrogen, and such entities may also need investment support. It should also be possible to produce and store hydrogen at industrial plants, even if electricity is purchased from an electricity producer. The stipulation that such investment should be conducted “behind the scenes” should therefore be removed. Furthermore, the restriction on renewable hydrogen should be extended to fossil-free electrically-produced hydrogen. Swedish Enterprise also agrees with the responses submitted from Jernkontoret, the Swedish Iron and Steel producers’ Association (Jernkontoret document number: 4421)

Article 44 Aid in the form of tax reductions under Directive 2003/96/EC

The possibility of a reduction in energy tax for energy-intensive industries is necessary for Sweden to maintain powerful tools to reduce emissions through high general taxation, while at the same time industry’s opportunities to compete are not curtailed. More than 50 per cent of Sweden’s electricity supply is from renewable sources, the highest proportion throughout the EU. It is also essentially completely carbon dioxide-free. The fact that production is well-established and expanded in Sweden therefore not only benefits Swedish competitiveness and growth but is also favourable from a global climate perspective.

This article refers to the Energy Tax Directive (ETD), which is also being revised. To ensure consistency and that state aid rules do not precede the formulation of other regulations, provisions referring to ETDs should not be amended until the ETD has been revised.