

**PUBLIC CONSULTATION GBER REVISION
BELGIAN (FLEMISH REGION) CONTRIBUTION
GENERAL REMARKS
3.12.2021**

1. GENERAL REMARKS AND SUMMARY

The Flemish Government thanks the Commission for its work and generally supports the new proposed amendments to the GBER articles.

Our remarks will focus on 4 topics

- Definition of Undertakings in Difficulties

We notice that article 2, 18 GBER is only slightly amended, only to include a reference to the changed chapter of risk capital financing.

We do regret that the much needed and already substantially documented request for a thorough revision of the UID criterium is not included in this draft. We once more stress the importance to adapt the UID rules based on a mere 50% equity to share capital threshold ratio. Hereafter we will repeat our suggestions for a more useable and acceptable approach. In our view this amendments could not be postponed until 2024.

- RDI articles

We agree that the current RDI section of the GBER functions well. However we do have some suggestions in order to further improve the useability.

In article 25, section 3 e) on additional general costs, we would suggest to set the overhead costs at 20 or 25%.

Regarding article 27 on clusters we welcome the new point 2, where it is now accepted that there can be more than one cluster organization working together in a consortium and where the respective costs and inputs can be attributed according to the principles of separated accounting.

Also, we strongly ask to increase the cluster notification threshold, foreseen in article 4 GBER. The 7,5 million is considered to be too low and should be increased to at least 15 million. Especially combined with the 10 year period foreseen in article 27, which we think should be deleted or significantly increased.

- Aid for environmental, energy or climate investments

We welcome the proposed restructuring of the GBER section and articles on climate, environment and energy.

As a general remark we think the approach with a counterfactual scenario where only the extra costs are eligible, does not always work.

We would suggest to open up the GBER on more occasions towards funding based on Capital expenditures (CAPEX) and Operating expenses (OPEX) as is also the case in EU funding through the ETS Innovation fund for example.

We welcome the opening to accept investments by third parties, as the definition in article 2, point 101 no longer refers to the “own activities” of the beneficiary.

On CCS we welcome the shift from the EEAG to the GBER, but we think the aid percentage of 20% is too low. Current pending cases would presumably not be viable with such a limited aid percentage. In cases where there is a very innovative character and no other similar projects already exist in the rest of the world, which makes the project thus per definition very high risk, 20% aid seems very low (certainly compared to ETS IF funding of 50-60%).

The development of hydrogen and hydrogen infrastructure should be consistent with the Climate Law. It is important that when low-carbon hydrogen would be supported, this would only be possible as a stepping stone and that all actors have a clear and credible pathway to full renewable hydrogen. However, projects with a gradual evolution towards green hydrogen should not be excluded a priori.

On the possible support for Hydrogen Trucks we oppose the competitive bidding. A lot of SME would suffer a great disadvantage compared to large competitors. Also this would lead to a competitive disadvantage for hydrogen trucks compared to battery trucks.

- Transparency (TAM) requirements

We strongly oppose the general approach to increase the Transparency requirements by lowering the threshold from 500.000 to 100.000 euro.

As the reporting requirements of the Covid-19 Temporary Framework have showed, this leads to a tremendous administrative burden on the member states and state aid granting authorities as they now have to supply a lot more data, which in a lot of cases, is also still to be inserted manually case by case.

This requirement even includes very small amounts of aid which would not be able to have a negative effect on competition or trade. Even the de-minimis threshold, which is not increased for 2 decades and which is not considered to be aid, has a higher threshold and is thus not required to be reported.

We would ask the Commission to keep the TAM threshold at 500.000 euro and also to consider increasing the de-minimis threshold to 500.000 in the future revision of the de-minimis regulation.

2. In dept analysis to some of the mentioned points and specific remarks

2.1 Definition of undertakings in difficulties, especially for start-ups and scale-ups

We fully support the idea to exclude economic unhealthy enterprises from state aid but are concerned that the translation of this principle into practical conditions in the general block exemption regulation has a negative side effect on start-ups and scale-ups.

The definition based on 50% equity to share capital threshold ratio poses serious granting constraints to start-ups and scale-ups. In particular, at the moment that an R&D/cost-intensive enterprise with limited or no sales faces the situation that more than half of the equity has disappeared as a result of accumulated losses, it will be classified as an 'undertaking in difficulty' (UID) as a consequence of non-compliance to the equity to share capital ratio requirement of 50%. Yet such situation is not unusual for a young R&D-intensive or scale-up company and does not necessarily imply that the enterprise is in difficulties.

We present six proposals for a way forward to address the problems encountered with the UID topic.

1. **Exemption for start-ups.** In the clauses in Art 2.18 SMEs less than 3 years old are exempted. This is positive, but 3 years is too restricted. Our results demonstrate that mainly young companies are affected: more than half of the decisions affected by Art 2.18 concerns companies younger than 7 years. The Commission has made an additional exemption for enterprises less than 5 years for aid under Art 22. This modification is a positive adjustment. However, this does not apply for R&D subsidies. Shifting to another legal basis for the 3 to 5 years age group is possible but is confusing for enterprises and may appear somehow artificial. To avoid the negative side effects for start-ups, we propose to implement a consistent exemption for start-up aid, R&D aid, aid for SMEs and aid for organization and process innovation and to extend the age limit to 7 years.
2. **Relation member states-EU.** The subsidies provided by the Commission in H2020 do not resort under state aid. In the case that aid from the Commission is combined with aid from the member states, this may create a contradiction. In such cases, a specific set of rules different from the overall GBER rules would be more appropriate. In general, state aid rules have been created to prevent state subsidies from distorting competition in the internal market. In the situation that budgets from member states are combined in a network to provide subsidies to consortia at a European level, the situation is different. Therefore, it is recommended to broaden a putative specific set of rules to formalized networks based on national subsidies such as for example Eureka, ERA-net etc..
3. **Companies in a group.** For enterprises that are part of a larger (international) group, the conditions outlined in Art 2.18 have to be applied on both the R&D&I aid applicant and the group (= the highest consolidation level in the single economic unit (SEU)). We recommend to limit the UID analysis to the group level together with a financial analysis at the level of the R&D&I aid applicant. Furthermore, this approach would equally imply the possibility to remedy possible financial shortcomings at the level of the R&D&I aid applicant (UID or not) through a guarantee from the parent company, when the latter is not a UID.
4. **Definition own funds.** The principle of the definition in Art 2.18 is based on the point that an enterprise is considered as an undertaking in difficulty when more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is calculated as the point reached

when the deduction of accumulated losses from reserves and all other elements that are generally considered as part of the own funds of the company leads to a cumulative amount that exceeds half of the subscribed share capital. Irrespective of the concept of the formula, the definition of 'own funds' has a major impact on the outcome of the calculation. Several liabilities that are taken into account in common financial practice as durable funding pillars of a company are being ignored in the calculation. We recommend taking specific long-term loans (that qualify as quasi-equity) and specific short-term loans into account as 'own funds' when calculating the ratio.

5. **Principle equity/capital ratio.** As mentioned above, the principle of the definition is based on an equity/capital ratio. Irrespective of how 'own funds' are calculated, we recommend to abandon the idea of working with a ratio in function of subscribed capital. As an alternative, we recommend to work with the absolute number of the sum of equity and quasi-equity. As long as the sum of equity and quasi-equity is positive, companies should not be considered as an undertaking in difficulty. Quasi-equity is commonly used as a global solvency indicator in the banking/investors world. The share capital pay-up obligation is different in different national laws and the share capital concept may be regarded differently in different national laws. Making the definition dependent on this ratio creates an unnecessary complication in the UID status interpretation of a company.
6. **Exemption for scale-ups.** The unwanted side effect of the definition of an undertaking in difficulty is most obvious on R&D-intensive young companies. At present, an exemption is foreseen for start-ups until 5 years. It is recommended to provide an age independent exemption for enterprises with a high burn rate as a consequence of a long (R&D&I related) investment phase combined with a long time-to-market horizon. These companies are in a process to become scale-ups. Since the terminology "scale-up" is currently used for different company types, the first step is to develop a clear definition of a (pre)-scale-up company, in combination with an analysis of the impact of the Art 2.18 definition on the different scale-up types. This is expected to be done by the SAM working group in collaboration with the Commission.

2.2 RDI articles

We agree that the current RDI section of the GBER functions well. However we do have some suggestions in order to further improve the useability.

- In **article 25, section 3 e)** on additional general costs, we would suggest to set the **overhead costs** at 20 or 25%.
- Regarding **article 27** on clusters we welcome the new point 2, where it is now accepted that there can be **more than one cluster organisation** working together in a consortium and where the respective costs and inputs can be attributed according to the principles of separated accounting. The collaboration of different parties, remaining independent, but working together to share expertise in operating a cluster, should be possible. We think it would be useful to include in the wording of article 27, that all organisations operating the cluster are eligible.

However, we still struggle with the fact that cluster aid, as it is set up in our innovation environment, does not always fit within article 27 as a whole. Quite often we do have to use a combination of several GBER articles within one cluster project in order to get the project going, which is not always easy to set up. One cluster project often combines the pure cluster

(investment or operating) aid, but also includes start up or scale up counseling to the participants or the development of an own innovative eco system with demonstration activities, non-economic activities of a partner research organisation, guidance or advisory services, including incubator services or acceleration of activities,... Some of those activities can indeed be supported according to article 28 GBER or via de minimis aid, others need to use the articles 25 or 26 GBER, or can be based upon the RDI Framework. These combinations lead to administrative burdens, timing delays and legal uncertainty.

We would like to invite the Commission to apply a more flexible approach as to the use of article 27 regarding partnering **research organisations** (RO's). It is not our intention to qualify all RO as cluster organisations, but it should be possible for a cluster organisation to have a second qualification as RO, for the activities they carry out regarding knowledge dissemination of results coming from independent research, whereby the organisation acts according the 3 criteria to qualify as a RO. The disseminated results would of course relate to results, insights, knowledge coming from independent research (and thus contrary to pure contract research or the follow up of individual interests), also respecting the principles on non-preferential offers.

Also, we strongly ask to increase the cluster **notification threshold**, foreseen in article 4 GBER. The 7,5 million is considered to be too low and should be increased to at least 15 million. Especially combined with the 10 year period foreseen in article 27.

We would also suggest to increase the **10 year period** or even delete the limitation to 10 years. In our view cluster aid remains useful and needed in order to continually improve the innovative environment of our economy. The clusters remain useful, even after the 10 year start up period. The GBER presumes that the clusters should be able to operate without aid after 10 years, but we fear that a lot of useful instruments or clusters would not be able to perform their intended task at the same high standards without further aid.

We would also like to suggest that the scope of the eligible costs would be enlarged. We believe that the wording of article 27 is rather strict and the accepted eligible costs too narrow. Next to the investment costs, and the personnel and operating costs, it should also be possible to allow some other "**contracted services**" made by the operator of the cluster, such as the hiring of external expertise, consultants, market research, access to databases,...

Moreover we are strongly convinced that it would be extremely useful for a cluster to be able to have access to **infrastructure for demonstrations, scale-ups or proof of concept activities**. We would thus plead for the extension of the eligible costs in article 27 towards research infrastructure to run these demonstrations, pilots and testing.

- **Article 28, section 2, c)** is indeed a useful clarification. However, as this article is only limited to SMS's, it does not offer a solution for the above mentioned problems of large enterprises participating in various cluster activities. Moreover, cluster organisations find it very difficult to quantify the correct indirect benefit for the users or the market price for the members participating to an event, infosession,...

3. Some punctual suggestions regarding the GBER articles

- **Art 16 regional urban development**

This is a very interesting article but is only useable within the regional aid map. It should also be possible to apply this article outside of the regional aid chapter.

These kind of cases are frequently proposed within the ERDF framework but can't be supported outside the regional aid map, notwithstanding the fact that urban development is one of the key issues in the structural funds goals.

- **Art 17 SME Investment aid**

We do not support the change of wording proposed in article 17, section 2 c). We would like to remain to the current GBER wording which does not limit the aid to the highest possible aid under a) or b) in case of cumulation. We believe the SME goals is sufficient to allow a cumulation within one beneficiary for both investment costs as to loan subsidies, as both aid clearly go to separated eligible costs.

- **Art 36b §4 – Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles**

For the sector of Trucks on hydrogen, we oppose that competitive bidding as per Article 2 point (38) is used for the following reasons:

1/ Trucks represent 5% of Europe's total GHG emissions. Trucks are predominantly bought by SMEs. These companies do not have the resources to conduct a detailed study to determine the lowest bid or clearing price. The complexity and the uncertainty of such a competitive bidding process will make them resign to participate and leave the terrain open to only the Largest Enterprises that do have the resources. This is not in line with the EU policy to support SMEs to have a same level playing ground. For the same reason competitive bidding will also disfavor Large Enterprises in small countries compared to Large Enterprises in large countries or MNOs.

2/ Competitive bidding also structurally favors big companies over small companies since big companies have a larger margin to cross-subsidize and submit a lower bid. This is not in line with the EU policy to support SMEs to have a same level playing ground. For the same reason competitive bidding will also disfavor Large Enterprises in small countries compared to Large Enterprises in large countries or MNOs.

3/ 67% of GHG emissions are created by heavy-duty long range trucks. These require hydrogen technology to be operationally viable for the Transport Operators. But given that the hydrogen technology is earlier in its development cycle than battery technology, thanks to the early implementation in cars, hydrogen trucks are still more expensive than battery trucks. So a competitive bidding will drive state aid to low duty short haul BEV trucks and away from heavy duty long haul hydrogen trucks,. In this way two thirds of the GHG for trucks will not be reduced and Europe will miss its GHG reduction targets for transport.

4/ Competitive bidding opens the door for strategic low bidding without the real intent to actually use the grant and buy the vehicle. This again favors big companies over small companies

If you would have any follow up questions, we remain at your disposal.

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