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TARGETED REVIEW OF THE GBER

FAIR's contribution for a recognition of social enterprises

FAIR salutes the initiative of reviewing the General Block Exemption Regulation (GBER) on State Aid, declaring certain categories of aid compatible with the internal market. Indeed, significant investment is needed in order to achieve just transitions in Europe, and the potential of private investment can be exploited in an optimal manner thanks to incitative measures though State Aid. European regulation should allow this potential to be exploited, while guaranteeing the conditions of a fair internal market.
Article 21 regarding SMEs, in particular, has been much clarified in the current draft regulation. This should allow State Aid, in particular in the form of tax incentives for private investors, to be more efficiently implemented.
However, FAIR and its members believe a crucial element has been left out of the draft regulation : **the recognition of social enterprises.** Their role in achieving European social goals, as well as their systemic difficulties to access financing, have been acknowledged in recent European initiatives, in particular in the Action Plan for the social economy Roadmap. In this context, the reviewing of the GBER represents an opportunity to address those issues.

Social enterprises (SE), by their weight and the variety of their actions, represent a major challenge for a sustainable, innovative, socially inclusive and ecological European economic growth in the different Member States. According to the European Economic and Social Committee (EESC), there are 2.8 million SE. They represent 8% of GDP in the EU and 13.6 million workers, or 6.3% of employees in Europe. From very small enterprises (VSEs) and small and medium enterprises (SMEs) to large groups of the social economy, they operate in every sphere of activity. SE are characterized by limited profitability: they are managed according to common characteristics, values and principles such as the primacy of the person and the corporate purpose over capital, voluntary and open membership and democratic governance. Profits are mainly reinvested in the creation or maintenance of jobs or in the development of activities in line with the company's corporate purpose.

Due to the innovative nature of many social enterprises, the sectors covered by their activity are wide-ranging. European SE are particularly active in the social integration of disadvantaged people; in social services of general interest; land-based industries and the environment; cultural, touristic, recreational activities and sports; etc. They are active in segments that are little or not covered by for-profit companies and have a limited impact on competition. **Through their activities and the way they operate, social enterprises therefore contribute to the achievement of many key Union objectives, and notably a just environmental transition for all Europeans.**

However, **European SE are facing structural difficulties in accessing financing as a result of the social finance market failure.** The reasons for these difficulties are numerous and have a variety of causes. Examples include the usually small size of SE, the fact that their securities are not listed, their low return on capital, which makes them less attractive to investors, and barriers to access to credit. These difficulties hamper their development and thus their ability to achieve their social objective. That is why it is necessary for SE to be able to benefit from support for access to financing in a sustainable way.

Despite their specificities, SE do not benefit from a special recognition under the GBER; they are assimilated to SMEs (when they meet the conditions). Under Article 21 of the GBER (and draft Article 56e that defines the conditions applicable to aids contained in financial products that benefit from the support of the InvestEU Fund), the aids from which SE may benefit are therefore limited to companies with less than 10 years' seniority and to a total amount of €15 million in the proposed regulation.

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- The temporal limitation is justified for SMEs because it is an aid for the launch of a company active on a market where it could harm fair competition by benefiting from State aid without any time limitation. The change from 7 to 10 years of seniority after registration provides more clarity for SMEs, and is, from FAIR's point of you, a good initiative. **However, this makes little difference for SE.** Contrary to traditional SMEs, in the case of SE, **the aid is not justified by the start of their activity but by the structural market failures** they face in terms of access to financing. This persists **throughout their lifetime (not just for a start-up period),** as recognized by the Court of Justice of the European Union and by the Commission.

- Concerning the €15 million cap on total aid, the condition is not appropriate for SE. As with the time limitation, social enterprises' need for support is not cyclical but **structural**. Indeed, social enterprises are unlisted and achieve lower margins. **The lower remuneration of investors impairs SE's attractiveness and causes difficulties of access to equity capital all along their life.** This is all the more true in the many capital-intensive sectors where social enterprises carry out their social objective: renewable energies, social housing, sustainable agriculture... The cap planned on the life time of the enterprises prevents lifelong support that social enterprises require.

In light of this unsuitability of the SME rules for SE, FAIR proposes to create **a specific framework for SE**, distinct from that applicable to SMEs, regarding the conditions for exempting risk finance aid schemes in favor of SMEs provided for in Article 21 and draft Article 56e. They are in line with (i) the objectives of the GBER; (ii) the current and recent European initiatives around the development of SE in Union countries; (iii) current Union strategic objectives; and (iv) the case law of the Court of Justice of the European Union.

1. Introduction of a definition of social enterprises in the GBER

In order to frame specific exemption conditions for SE, FAIR proposes to draw upon a preexisting definition to which regulatory effects are already attached in the Regulation on European social entrepreneurship funds (Regulation No. 346/2013, Article 3 d)), or in the Regulation establishing the European Social Fund Plus (ESF+) (Regulation No. 2021/1057, Article 2 1 13)).

2. Removal of the limit of 10 years of maximum seniority

In order to address the structural market failures that hamper their access to financing, SE, provided that they meet the criteria of the above-mentioned definition, should be eligible for aid all along their business and independently from a start-up period.
This could take the form, for instance, of an addition within the new article 21, after paragraph 3 point (c), of a new point (d), referencing the definition of social enterprises.

3. Amendment of the cap on the aid amount

SE need this cap to be significantly higher than that enjoyed by SMEs, which are in a much more favorable situation for access to finance.
Account should also be taken of the specific financing needs of sectors where a high level of equity capital is required, with the difficulty of identifying the latter precisely without making unjustified exclusions.
This radical solution does not, however, leave the Commission powerless, since it may, on the occasion of the periodical review of the GBER, decide to reinstate one in case the conditions of access to finance for social enterprises were to improve to such an extent that they would become similar to those enjoyed by other businesses.

FAIR was born in 2021 from the merger of Finansol, historic actor, and iiLab, innovation lab on impact. Federating social impact finance in France and representing a French expertise center abroad, FAIR gathers more than 110 social enterprises, banks, asset managers, NGO, schools and committed individuals. FAIR manages a label, the Finansol label, which is helps the public distinguish social savings products from other products. Over 160 such products have been awarded the Finansol label as of today.

Clémence VAUGELADE, Advocacy manager: clemence.vaugelade@finansol.org

Julia ROBIN, Advocacy Officer: julia.robin@finansol.org

FR: https://www.finance-fair.org/- EN: https://www.finance-fair.org/en/