POSITION PAPER

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

SMEunited welcomes the opportunity to submit comments on the draft amending regulation to the General Block Exemption Regulation published on 6 October 2021.

General remarks

SMEunited shares the view that fair competition is a basic prerequisite for the economic success of the European Union. SMEs recognise the necessity of controlling State aid at European level to avoid a subsidy race between Member States or regions and to ensure the functioning of the European internal market. At the same time, targeted State aid should be possible in accordance with the EU treaties, which serve to overcome structural weaknesses and to compensate for market failures, including the disadvantages due to the location or size of a company.

Therefore, SMEunited welcomes further simplification and clarifications of the GBER to increase legal certainty and facilitate the implementation of aid measures to promote the ecological and digital transformation.

The simplification of the State aid regime is an important and correct goal, as it will reduce the bureaucratic burdens for SMEs applying for aid and for the provider of aid. Furthermore, SMEunited support the inclusion of additional provisions supporting the transition to a greener and more digital economy.

Environmental and energy aid

In principle, we welcome the fact that the definitions and articles in the GBER are being adapted to ensure coherence with the new environmental and energy aid guidelines. The draft of the revised guidelines indicates a stronger prioritisation regarding the objectives of climate neutrality, climate impact adaptation, resource and energy efficiency, circular economy, zero-pollutant and preservation of biodiversity. In principle, this shift is logical, considering the EU's ambitious binding commitment to climate neutrality by 2050 and GHG reduction of at least

55% by 2030 in the Climate Act. However, in addition to the goals resulting from the Green Deal, goals such as economic stability, access to financing for classic business models and less bureaucracy for the SMEs should also be considered.

Furthermore, it is fundamental that the compensation regulations for companies with a particular "carbon leakage" risk are limited, so that smaller energy-intensive companies and companies that are not eligible are not unjustifiably disadvantaged. In this respect, the requirements regarding the consideration of intensity and the minimum level appear to be quite conclusive. The same applies to the focus on energy audits as an indication for the cost-effectiveness of the aid. In view of the EU's much more ambitious energy and climate policy - especially in the context of the Green Deal and the "Fit for 55" package - the principle of "what is required cannot be subsidised" that has applied up to now must also be reviewed. This applies, for example, to minimum energy standards in building and renovation projects, which SMEs may not be able to finance without structured support measures.

Regarding the promotion of hydrogen, there are many possible applications for the SME sector (e.g. propulsion of light and heavy vehicles, heating technologies in different building sizes), which are to be evaluated in a result- and technology-open manner. All the approaches discussed today (battery electricity, hydrogen in fuel cells or hydrogen in combination with other energy conversions, e-fuels, other gas technologies, etc.) have their respective strengths and weaknesses. Aid in this area should take this into account and keep an eye on practicality and economic viability. However, it is not yet possible to forecast precisely in which fields of application hydrogen will prove to be particularly advantageous compared to other technologies. We therefore welcome the fact that the corresponding subsidies can run up to possible economic market maturity under conditions that are subject to risk minimisation. We consider the proposed adjustments in the GBER in connection with the revised guidelines for environmental and energy aid to be sufficient in principle.

Regional aid

SMEunited welcomes the adaptation of the GBER to the revised guidelines for regional aid for the period from 1 January 2022. For the SME sector, which operates primarily at a regional level, regional policy frameworks are of great importance. SMEs make a decisive contribution to activating local potential, implementing innovation, and creating value at local level. The sector is therefore particularly dependent on functioning regional environments. In addition to a regulatory framework that is appropriate for SMEs, this requires a sustainable regional policy that contributes to the long-term safeguarding of economic conditions, the creation of efficient infrastructures and the guarantee of attractive local living conditions.

The aim of regional policy measures must be to create self-sustaining economic growth. Above all, long-term, targeted instruments are needed to stimulate innovation, to reduce investment thresholds for smaller companies, to secure education and training in the region and to guarantee efficient transport and telecommunication links as well as local supply structures.

Numerous instruments of cohesion policy have contributed to activating and stabilising SMEs and in improving economic conditions in the regions and must therefore be continued. It is therefore positive that the application of the GBER to funded projects carried out by SMEs with a budget of less than EUR 50 million will be facilitated by adjusting and specifying the notification thresholds.

In view of globalisation, regional development must not only support structurally weak regions, but also continue to support the development potential of regions that are currently still relatively strong, in order not to lose touch internationally and to support adaptation processes at an early stage. Developments such as the ageing of society and the resulting shrinking of the labour force, migration and integration, the accelerated structural change due to digitalisation, the tightening of environmental regulations and, finally, the effects of the COVID-19 pandemic also pose great challenges for businesses in the regions that have been relatively strong up to now, and they need support in overcoming these challenges. The SME sector therefore needs new funding criteria that take account of the major developments of our time, are better tailored to its needs and go beyond unemployment rates and gross annual wages to address the new challenges of the regions.

According to the previous regional aid guidelines, each job created by the investment had to remain in the area for five years from the time it was filled**.** Member states could reduce this to three years for SMEs. We welcome the fact that this reduction to at least three years for SMEs is now made binding in the draft of the revised GBER in line with the revised regional aid guidelines.

Aid for risk finance investment

The adjustments to the GBER regarding risk financing are positive, especially insofar as they concern SME financing. It is particularly difficult for small enterprises to mobilise funds that they urgently need. This is mainly because they face structural difficulties in raising finance, e.g. because they are not able to sufficiently demonstrate their creditworthiness or the soundness of their business plans to investors. This problem has been aggravated by the COVID-19 pandemic. It is therefore welcomed that the rules on aid for risk co-financing are clarified in the revised GBER. However, the idea of addressing such a market failure for SMEs should also be applied to other areas in which SMEs struggle with structural problems. In particular, the granting of free consultancy services to SMEs by SME organisations subsidised by a State aid programmes should be facilitated and exempted from state aid control in the GBER. There is also a market failure regarding such SME consultancy services because they are not offered sufficiently and at affordable costs on the market.

Furthermore, Article 21 on risk finance aid states that “neither Member States nor entrusted entities shall invest directly into the eligible undertakings without the involvement of a financial intermediary”. This new disposal changes completely the existing rules under this article. We do not see the rationale for excluding NPBIs being both entrusted entity and financial intermediary for risk finance aid. This enables a more direct and time efficient process for delivering risk finance aid to final beneficiaries. In addition, other aids covered under the GBER do not provide for such exclusion. Therefore, we would strongly advocate for keeping the existing wording in Article 21.

Undertakings in difficulty

In principle, State aid within the meaning of the GBER may not be granted to undertakings in difficulty. Instead, the Guidelines on State aid for rescuing and restructuring firms in difficulty apply.

In crisis times, especially during the COVID-19 pandemic, SME owners have increasingly injected money into their companies, often in the form of a shareholder loan with qualified subordination. The decisive factor for the creditworthiness of the company is whether this shareholder loan is considered as share capital or debt. According to the current definition of an "undertaking in difficulty" in Art. 2 (18) a) and b) GBER, it is, however, unclear whether such subordinated loans can be qualified as share capital. According to the current opinion of the EU Commission, share capital is basically all items that are allocated to equity capital according to international accounting standards (IAS and IFRS). Subordinated loans would therefore not classify as share capital, but as debt capital. However, if subordinated loans with qualified subordination are granted to SMEs, it is questionable whether a reference to international accounting standards is justified. For small companies, the national provisions, especially in national insolvency law, are more decisive. Accordingly, in many countries, subordinated loans are qualified as share capital due to the special subordination.

In the context of the revision of the GBER, it should therefore be added to the definition of "undertaking in difficulty" (Art 2 (18) a) and b)) that subordinated loans are considered as share capital, at least for SMEs.

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