NHO Confederation of Norwegian Enterprise

European Commission
Directorate-General for Competition, Unit A3
State aid Registry
1049 Bruxelles /Brussel, Belgique /België

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

1. Introduction – General comments

Norwegian Enterprise (NHO) supports revising the GBER to align it with the revision of the Energy and Environmental Aid Guidelines, the Risk Aid Guidelines, the Research, Development and Innovation Framework, and the Risk Finance Guidelines. We strongly support the Commission´s objective on the green and digital transition. The green and digital transition will require huge transformative investments by both the public and private sectors and European businesses should be supported in their transformation towards climate neutrality, sustainable growth, job creation and prosperity. The EU State aid rules have an important role to play in achieving this. The GBER is important in setting the premises for the upcoming energy and digital transition and simultaneously keeping well-functioning market-based principles of fair competition between companies across the EU/EEA.

However, the EU ETS functions as the leading instrument for Europe's climate protection and ensures that the carbon reduction targets are reached in the most cost-efficient manner, working directly towards the achievement of the decarbonization objectives.

EU State aid policy should support good aid, such as aid that contributes to the green and digital transition, while fundamentally safeguarding a market driven European economy. It is important that subsidies address market failures (when the market does not remunerate the investor for the investment) and that any distortive effects of the subsidies are limited. Any aid undermining the effectiveness of the EU ETS price signal as a short and long term operational -and investment-decision driver needs to be avoided.

NHO believes that large aid schemes should continue to be the subject of an individual examination by the Commission to ensure that these principles are followed and that the aid beneficiaries obtain the necessary legal certainty to carry out the project. In addition, Member States should consider other general policies to reduce costs for businesses and adjust their tax systems to support the green and digital transition and minimise the use of State aid. Such measures typically do not distort the market and can result in lasting positive effects for business.

Overall, the expansion of the General Block Exemption Regulation and the State aid modernisation has improved discretionary measures for the Member States, allowing them in some situations to take accurate account of the specific situation in their countries. However, improved discretion has also increased the risk of a more subjective and less uniform application of the State aid rules. The Commission has revealed important compliance gaps, especially regarding block-exempted measures that are directly implemented at national level. Hence, Member States need to improve their adherence to the rules and the Commission should continue to support their efforts.

Improved discretionary measures for Member States should be pictured against the need for clear and unambiguous rules to avoid any diverse interpretation and application between the EU/EEA Countries. Striking the right balance is difficult. It is therefore important that the revised GBER is frequently being evaluated.

Other parts of the existing framework are also relevant and should be properly evaluated such as matters related to the recovery of illegal aid, national enforcement, private enforcement, and the lack of clear procedural rules to be followed by the Commission in relation to disputes about new or existing aid. The Commission should evaluate the enforcement of State aid rules at national level and focus especially on how private enforcement, involving national courts, could be encouraged.

2. Aid for research, development and innovation

NHO welcomes the clarification that "Digital Innovation Hubs", including those under the Digital Europe Programme" may qualify as innovation clusters as defined in the GBER. This change aims to provide clarity for all Member States and relevant stakeholders, on how to grant national support to Digital Innovation Hubs. This will again stimulate collaboration, networking, and innovation solutions.

Also, we welcome the clarification on *innovation activities of SMEs* whereby the current definition is extended so that it covers more IT, software development, artificial intelligence, and other digital technologies (such as support for services provided by research infrastructures, testing and experimentation infrastructures, innovation clusters or private digital experts).

NHO appreciates that the definitions on *industrial research and experimental development* activities also include R&D activities on digital industries and technologies such as super-computing, quantum technologies, block chain technologies, AI, cyber securities, big data and *cloud or edge* technologies. In the view of NHO the use of the notions «industrial research» and «experimental development» should relate to different maturity in the value chain instead of the level of aid intensities. Deciding infrastructure based on maturity will minimise the grey areas.

We support the attempt to clarify new definition and compatibility criteria enabling support for testing and experimentation infrastructures in Article 26a (also known as "technology infrastructure"). These are used and called for predominantly by the industry for R&D activities such as developing and testing new technologies – that may also serve to incentivise R&D&I investments facilitating the twin transition. However, the lack of clarity between the concepts of «technology infrastructures» and «existing research infrastructures», including possible grey areas between the two renders further guidelines from the Commission necessary. The two concepts could in some ways also be competing.

Furthermore, we support the simplification of the conditions for aid with R&D projects under Article 25 GBER. However, the simplified cost structure used to calculate indirect costs of R&D projects in the form of a flat rate of up to 15 per cent, is in our view too low. Furthermore, a simplified procedure should not result in reduced cost covers for companies with higher indirect costs - which is often a likely outcome of the use of flat rates. Indirect costs vary significantly between different projects, different branches, and different company sizes. The Commission should take this into account in order to strike the right balance.

Lastly, we also support that start-up aid can take the form of a transfer of intellectual property rights (IPR) and related access rights from a research organisation where the underlying IPR has been developed, to SMEs, Article22.

As regards aid *for innovation clusters* in Article 27, we welcome the clarification on the aid recipients and the associating cost allocation method. However, various clusters work as an important link and collaborator between public authorities and industry. The activities pursue to a much larger degree than before an industry/research and regional policy agenda. This is further reinforced by the Green Deal and Digital Framework policies. The members only cover the costs to a certain degree. At the same time research organizations, companies etc. are carrying out both non-economic basic research and economic commissioned research. Very often, the same infrastructure, personnel and equipment are used for both activities. For this reason, several aid providers have a cautious approach in granting aid in order not to infringe any provisions in the GBER. In the view of NHO, more *guidance* is needed in order to manage this distinction and taking the developing cluster activities into account, allowing for more targeted aid. A model of the RD&I Guidelines paragraph 18 could for example be further investigated.

Regarding the **incentive effect** for research, development and innovation**,** in practice it is very difficult to prove that aid for RD&I influences a company to pursue research that it would not otherwise have pursued. The investment decision of an RD&I project is based on multiple factors that can hardly be distinguished from each other. The subsidy alone often does not lead to a decision to invest, but reduces risks, speeds-up the process, stimulates collaboration with other companies etc. Fulfilling the requirement in the incentive effect can be extremely difficult and burdensome for companies, for example when multiple RD&I project run simultaneously or the firm's contribution to a single project is relatively small compared to the firm's overall RD&I budget. There should thus be less strict criteria on evidence related to the requirement that certain RD&I activities are carried out in addition to normal day-to-day operations, also since competitors located outside the EU do not suffer from comparable constraints.

3. Aid for environmental protection and energy

If Europe is to reach net-zero by 2050 the scaling up of hydrogen production and its use, as well as carbon capture utilisation or storage (CCUS), is imperative. Hence, any production of the emission free energy carrier hydrogen should be treated legislative equal in line with the principle of technology neutrality. Moreover, be it blue hydrogen with CCS or the reuse of CO2 or any part of the value chain needed to release the full potential of the carbon circular economy, it should be accepted as important in the energy transition by the GBER.

Definition of electricity-based hydrogen

According to the draft amending regulation Article 2 paragraph 102 e) reads as follows: "The carbon content of electricity-based hydrogen shall be determined by the <u>marginal generation unit</u> in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid."[our underlining]

In the view of NHO it is unclear how the "marginal generation unit" should be interpreted in this context. Is it the power producer that sets the price in the day-ahead market, in the intraday market or in the regulating power markets? In the first two cases, the bidding is anonymous and there are no facility-specific bids, but players bid MWh per price area. Regulatory power may be easier to identify, but several unresolved issues arise. Another ambiguity is how PPA agreements with e.g., wind or solar power must be handled in this context. Another question that arises is whether this definition is compatible with other EU regulations, such as the Guarantees of Origin scheme. We therefore recommend that this definition of electricity-based hydrogen be deleted or further outlined.

Regarding energy efficiency, heating and cooling (Articles 38 and 39)

Energy efficiency measures may reduce and optimise energy use in the building sector. Such measures should be based on technology neutral principles, and we therefore do not support the exclusion of district heating and -cooling (Art 38, 2b). District heating and cooling facilitates use of waste heat and may free up capacity in the power grid and thus give room for further electrification.

Support for heating/cooling solutions and production should not be limited to specific technologies but should be based on technology neutral measures, not limited to on-site installations. We suggest reformulating Art 39, 2a.(a) to "on-site *and nearby* renewable energy installations generating electricity, heat or cold", as this may increase the system performance at area level.

Regarding biofuels, Article 41

Not supporting operation cost to biofuel production exceeding 50 000 tons a year, is not in line with CEEAG or the well-established forecast that biofuels is a transition fuel highly needed to fulfil 2030 climate targets. As a transition fuel demand is expected to fall thereafter and, hence, with such market prognosis it's imperative that actors get predictability in order to develop value chains beyond 2030, otherwise investments will not materialise.

Sincerely,

Per Øyvind Langeland
Director, Industrial Affairs

Confederation of Norwegian Enterprise