EUROFER
THE EUROPEAN STEEL ASSOCIATION

## EUROFER contribution

# TARGETED REVIEW OF THE GENERAL BLOCK EXEMPTION REGULATION (STATE AID): REVISED RULES FOR STATE AID PROMOTING THE GREEN AND DIGITAL TRANSITION

EUROFER (the European Steel Association) welcomes the consultation on the targeted revision of the GBER.

**Key comments:**

EUROFER foresees that the very large additional investment and operating expenditures of decarbonised steel production, which the markets are not able to bear fully and immediately, need to be addressed by several supporting instruments. Also State aid will be an important building block of a respective array of financial support mechanisms, which themselves need to be an element of a wider decarbonisation-related mix of instruments. Furthermore, it is very important for the industry that the comprehensive projects to decarbonise the economy are supported by the regulations, e.g. in the GBER.

In this respect, the Commission's consultation draft on the "General Block Exemption Regulation" (GBER), contains some essential aspects. One of the most important are the Topic of ***"testing and experimentation infrastructure".***

***Testing and experimentation infrastructures*** are sometimes established in single undertakings with quite complex and large-scale operations or collaborations of such single undertakings. This is already indicted by the Commission Staff Working Document SWD (2019)158 Technology Infrastructures, when it states that "*Technology infrastructures can be sector-specific or technology-focused and can be public, semipublic or private. They … can be found in big industries as well. Technology infrastructures can also be shared, i.e. operated by several organizations,… Access and services may be provided to …".* However, neither the Commission Staff Working Document nor the draft for a review of the GBER develops this aspect further. Most importantly, such infrastructures allow advancements in deep restructuring and total transformation of such production processes.

This advances progress in topics related to the European Union objectives as established by the Green Deal. Consequently, respective state aid does not automatically require general access to such facilities, as the general good is also fostered by single use and industrial collaboration. In addition, infrastructures owned and operated by single user or industrial collaborations are specifically designed for the processes, products installations of their production sites. Access by other parties may be highly disruptive or technically not feasible at all. Therefore, their access should not be a mandatory condition for receiving aid but subject to the decision of the single companies or consortia. Rather, it should be an option for the owner of the testing and experimentation infrastructure.

**Corresponding modifications should be included in Recital 2, Article 2 (98a) and Article 26a:**

**Recital (2)**

Aid for the construction or upgrade of testing and experimentation infrastructures mainly addresses the market failure stemming from imperfect and asymmetric information or coordination failures. Contrary to research infrastructures, testing and experimentation infrastructures are used predominantly for economic activities and, more specifically, for the provision of services to undertakings, ***but also to advance industrial processes and products of complex large scale production sites or to create new synergies between these.*** Constructing or upgrading a state of the art testing and experimentation infrastructure involves high up-front investment costs, which together with an uncertain client base, can render access to private financing difficult. Access to publicly funded testing and experimentation infrastructures must be granted on a transparent and non-discriminatory basis and on market terms to multiple users. ***Access to publicly funded testing and experimentation*** infrastructures consisting of ***facilities and equipment to advance through industrial research and experimental development new products, processes and services and which is owned and operated by single private companies or consortia of private companies with the objective to advance the transformation of these companies, either within a single company or with regard to collaboration and industrial synergies, for alignment with the European Union objectives as established by the Green Deal shall be subject to the agreement of these single companies or consortia.*** To facilitate users' access to testing and experimentation infrastructures, their user fees can be reduced in compliance with other provisions of Regulation (EU) No 651/2014 or the de minis Regulation6. If those conditions are not respected, then the measure may entail State aid to the users of the infrastructure. In such situations, aid to the users or for the construction or upgrade is only exempted from the notification requirement, if the aid to the users is granted in compliance with the applicable State aid rules. Multiple parties may also own and operate a given testing and experimentation infrastructure, and public entities and undertakings may also use the infrastructure collaboratively. Testing and experimentation infrastructures are also known as technology infrastructures.

*Justification*

*Testing and experimentation infrastructures can also consist of collaborations of single companies to create together such infrastructures, with the aim to advance their own processes and products or to create new synergies and single companies, which mirror in such infrastructures their own complex processes.*

**Article 2 (85 - 86)**

"(85) 'industrial research' means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or aimed at bringing about a significant improvement in existing products, processes or services, including digital products, processes or services, in any area, technology, industry or sector (including, but not limited to, digital and **energy intensive** industries and technologies, such as super-computing, quantum technologies, block chain technologies, artificial intelligence, cyber security, big data and cloud technologies and **low-carbon and climate neutral technologies**).

Industrial research comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, where necessary for the industrial research and notably for generic technology validation;

(86) 'experimental development' means acquiring, combining, shaping and using existing scientific, technological, business and **energy intensive** other relevant knowledge and skills with the aim of developing new or improved products, processes or services, including digital products, processes or services, in any area, technology, industry or sector (including, but not limited to, digital industries and technologies, such as for example super-computing, quantum technologies, block chain technologies, artificial intelligence, cyber security, big data and cloud and **low-carbon and climate neutral technologies** or edge technologies). This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services.

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of "real life" operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvement.

**Article 2 (98a)**

'Testing and experimentation infrastructures' means facilities, equipment, capabilities and related support services required to develop, test and upscale technology to advance through industrial research and experimental development activities from validation in a laboratory to a validation representative of the operational environment, and the users of which are mainly industrial players, including SMEs, which seek support to develop and integrate innovative technologies for the development of new products, processes and services, whilst ensuring feasibility and regulatory compliance. ***It also means facilities and equipment to advance through industrial research and experimental development new products, processes and services and which is owned and operated by single private companies or consortia of private companies with the objective to advance the transformation of these companies, either within a single company or with regard to collaboration and industrial synergies, for alignment with the European Union objectives as established by the Green Deal.*** Testing and experimentation infrastructures are sometimes also known as technology infrastructures;

*Justification*

*Whilst the definition is well differentiated from the one on "research infrastructures", it still does not adequately cover all aspects of industrial development infrastructures. What is missing is a reference to collaborations of single companies to create together such infrastructures, with the aim to advance their own processes and products or to create new synergies. Alternatively, this pertains also to single companies, which mirror in such infrastructures their own complex processes.*

**Article 2 (102e)**

The definition of low-carbon hydrogen in Article 2 (102e) is difficult to follow and interpret. The numbers and calculations specified must be clarified since the meaning of them and their consequences are not possible to evaluate at this point in time.

Also the last part of the sentence says: "The carbon content of electricity-based hydrogen shall be determined by the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid;" this raises a number of questions and is difficult to see how it should be implemented in practice. Therefore, EUROFER suggests that this sentence is removed.

**Article 26a**

**Investment aid for testing and experimentation infrastructures**

1. Aid for the construction or upgrade of testing and experimentation infrastructures shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The price charged for the operation or use of the infrastructure shall correspond to a market price or reflect their costs plus a reasonable margin in the absence of a market price.

3. Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available. Access by third parties to infrastructures ***owned by single private companies or consortia of private companies and operated with the objective to advance their processes and products with regard to alignment with the Green Deal objectives is subject to a corresponding decision of these single companies or consortia.***

4. The eligible costs shall be the investment costs in intangible and tangible assets ***as well as personal cost***.

5. The aid intensity shall ***be up to 50*** % of the eligible costs.

*Justification*

*Infrastructures owned and operated by single user or industrial collaborations are specifically designed for the processes, products installations of their production sites. Access by other parties may be highly disruptive or technically not feasible at all. Therefore, their access should not be a mandatory condition for receiving aid but subject to the decision of the single companies or consortia. In such a case the access rules as provided in this Article shall apply.*

**Article 36 (6b): Investment aid for environmental protection including climate protection: Increase of the aid intensity up to 100 % when a tendering procedure cannot happen**

According to the new version of Article 36, investment aid for environmental protection, including climate protection, is compatible with the internal market and exempt from the notification requirement. Furthermore, paragraph 6b) states that the aid intensity may amount to up to 100 % of the eligible costs if the aid is granted in the context of a tendering procedure, provided that the other additional conditions are met.

**The draft leaves open what follows in cases where a call for tenders cannot take place or if not all preconditions for a tendering procedure are fulfilled, for example because there is no competition or where the projects are not comparable.**

The prerequisite for competition is the existence of a market and thus a minimum diversity of actors and projects to ensure sufficient competition. This is a difficult in a concentrated market such as the steel industry.

Particularly in areas where massive investments will be necessary by 2030, as hydrogen-based processes in industrial applications, such a market has not yet been set. Therefore, the **exemptions from the tendering procedure in the GBER should be possible so that in these cases (i.e. no competition or where the projects are not comparable) an exemption from the notification obligation as well as 100% aid intensity are also guaranteed**.

**Art. 36 (Hydrogen):** the explicit reference to renewable hydrogen and low-carbon in the GBER is welcomed. The possibility to use natural gas as a flexibility option for low-carbon steel making is also appreciated.

**Article 36.5**

5. The eligible costs shall be the extra ***environmental costs determined by comparing the costs of the investment to those of a counterfactual investment that would be undertaken in the absence of the aid, as follows***

***(c) where the counterfactual would result in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the maintenance, repair and modernisation costs of the counterfactual investment, but reduced by the equivalent cost of the investment, discounted to the point in time when the aided investment would be undertaken;***

*Justification*

*To the extent that maintenance cost fall into the period for which investment and counterfactual are compared, the maintenance cost of the investment should be subtracted from the maintenance cost of which the counterfactual exists. If the maintenance cost of the investment were not subtracted from the maintenance cost of which the counterfactual, the eligible cost would be artificially reduced and thus a funding gap will remain, which in turn could render the investment into environment protection or climate protection unfeasible, in spite of the existence of this aid category.*

In addition, **the draft introduces new 'green' conditions that need to be fulfilled by large energy-intensive businesses to receive block-exempted aid in the form of reduced tax rates under the Energy taxation Directive**. This will ensure that the aid will lead to an increase in energy efficiency and to investments in projects leading to substantial reductions of the beneficiary's greenhouse gas emissions.

In this respect, the draft adds two conditionalities to ETD to grant discount rate (on the top of ISO50 001):

- To implement the recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments are proportionate; with this regard, EUROFER believes that the energy efficiency investments with a payback period of 3 years do not reflect the reality of business decisions in the steel sector, which are bound to a significantly shorter period. Furthermore, the draft text does not take into account early actions such as recent energy efficiency investment.

  Or, alternatively,

- To invest a significant share of at least 50% of the amount of the reductions in projects that lead to substantial reductions of the installation's greenhouse gas emissions. Where applicable, it should lead to reductions well below the relevant benchmark used for free allocation in the EU Emissions Trading System. This requirement to invest at least 50% of the received state aid into investments to reduce direct emissions of the installation appears not to be fully consistent with the scope of the ETS Guidelines which are targeting indirect costs.

**Article 38 (Investment aid for energy efficiency measures)**

To the extent that the draft EU Energy Efficiency Directive is implemented in its current form, the obligations of Member States and efficiency targets will be significantly tightened. Significant investments will be required to achieve them. The aid intensity must be increased significantly to achieve the targets, i.e. to at least 50%.

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

The steel industry needs the greatest possible planning security, particularly for the switch to low-carbon and in future to climate-neutral technologies. The tightening of the exemption from the notification requirement for national tax relief schemes provided for in Article 44 GBER has the opposite effect and should therefore be dropped. The energy tax relief for energy-intensive industries and companies serves to maintain international competitiveness and should not be linked to a requirement to invest in energy-saving measures. In this way, companies are immediately deprived of the rebates needed to limit costs. This applies even more if a high proportion of 50% of the relief is to be reinvested directly. In addition, there is a risk that such requirements will tie up investments in existing plants, which will have to be replaced by low-$CO_2$ processes in the future. The existence of energy management systems provides a comprehensive information base on energy saving potentials and thus creates an appropriate and sufficient incentive for energy efficiency measures. Thus, the obligation to review tax relief on the basis of the GBER creates additional uncertainty regarding the admissibility of state relief. This is particularly the case against the background of the annual obligation to review the necessity of the tax relief, should the relief regulation be subsumed under Chapter 4.1. of the CEEAG.