ROYAL NORWEGIAN MINISTRY OF
TRADE, INDUSTRY AND FISHERIES

European Commission
Rue de la Loi
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Consultation - HT.5934 - Review of the General Block Exemption Regulation (State aid)

The Norwegian Ministry of Trade, Industry and Fisheries ("the Ministry") refers to the consultation on the targeted review of the General Block Exemption Regulation ("GBER") concerning revised rules for State aid promoting the green and digital transition.

The Ministry has the overall responsibility for the Norwegian Government's competition policy, and coordinates comments from the Norwegian central administration in State aid regulatory processes.

On behalf of the Norwegian Government, please find our comments below.

1 General issues

The Norwegian Government welcomes the steps proposed in order to align the State aid Guidelines and the GBER. We are overall satisfied with the draft provisions promoting the green and digital transition.

As a general comment, and without prejudice to the scope of the EEA Agreement, Norway supports the overall approach of the EU strategies on integration of energy systems, and on hydrogen. Norway takes note of and supports a market based and technology neutral approach.

We do however have a few concerns as to whether the draft provisions are fit to successfully incentivize the deployment of innovative technologies for improved environmental and

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climate protection, as well as relevant research, development and innovation in the years to come. We have, furthermore, concerns regarding some of the general features of the GBER which are not addressed in the draft provisions.

These concerns are elaborated specifically below.

1.1 Procedural requirements for aid schemes in the form of tax advantages

The Regulation applies to both individual aid and general aid schemes. Examples of the latter are aid schemes granting tax advantages (exemptions, reduced rates etc.).

However, the Regulation presupposes in some respects that aid is granted individually after an ex ante control of the undertaking´s eligibility for aid, for instance on the basis of an application. The Norwegian tax system, however, is based on the system of self-assessment, i.e. the tax base is declared and in many cases also the payable tax is stipulated by the tax payer himself, according to the relevant general tax provisions. This system applies also when an aid scheme forms part of the tax. The tax authority´s task ex ante is to inform and guide the tax payer when needed and to ex post control the tax declarations according to general national guidelines. The conditions in the GBER, particularly Chapters I and II, are in some respects difficult to apply according to the wording to aid granted through such tax schemes.

We would therefore ask the Commission to consider whether the revised GBER in some ways could be adjusted to this special need for clarification in the case of general aid schemes, and specifically with regard to aid schemes which form part of general tax provisions, where the aid is granted according to automatic criteria, and without an application or an individual ex ante assessment made by the granting authority.

2 Aid for environmental protection

2.1 Article 2 point (130) – definition of energy infrastructure

We welcome the broadening of the definition of energy infrastructure to i.a. include off-shore electricity grids, hydrogen and infrastructure for CO2, as well as projects under the revised TEN-E regulation. However, the definition of CO2 infrastructure should include dedicated modes of transport such as ship, truck and train, for the permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC of the European Parliament and of the Council. The definition should also include infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC, and associated surface and injection facilities. These are amendments suggested by the European Parliament to the corresponding definition in the proposal for revision of TEN-E-regulation, Annex II point 5.[1]

[1] See note from the General Secretariat of the Council, 1 October 2021, 2020/0360 (COD), 12300/21.

2.2 Article 2 points (131a) and (131b) – definitions of CCS and CCU

The suggested definitions in points (131a) and (131b) of 'carbon capture and storage' and 'carbon capture and utilisation' should be broadened, and not be limited to CO2 captured from industrial plants based on fossil fuels or biomass. It should also encompass process emissions, such as from cement production, and include carbon capture and storage in other sectors. We suggest a technology neutral approach in the definition. It could read as follows: *'Carbon capture and storage' or 'CCS' means a set of technologies that captures CO2, transports it to a storage site and injects the CO2 in suitable underground geological formations for the purpose of safe and permanent storage of CO2*.

2.3 Articles 4 (v)-(va), 41 and 43 – Renewable and low carbon hydrogen

The amendment of the Article 4(v) and insertion of a new point (va), as well as Article 41 and 43 to include renewable hydrogen, should reflect the approach of the EU hydrogen strategy and include low carbon hydrogen and renewable fuels of non-biological origin. This would also correspond to the technology neutral approach in other parts of the regulation. Examples of provisions in the proposal with a technology neutral approach encompassing low carbon hydrogen, such as the definitions of energy infrastructure, are Article 2 (130) and Article 48 on investment aid to energy infrastructure, and Article 36a on investment aid for recharging or refuelling infrastructure, point 2.

2.4 Article 36 paragraph 5 – extra environmental investment costs and electricity

We would welcome the possibility to support investments for which the extra environmental investment costs cannot be determined by the comparison with a counterfactual scenario because such a less environmentally friendly counterfactual investment cannot be identified. This would often be the case for investments in new and innovative technologies at their first industrial deployment phase, for which the alternative scenario is no investment or no business- as usual operation scenario and therefore, no credible counterfactual scenario can be identified. In such cases, we find that the total costs related to environmental protection could be eligible for support.

Please note that first industrial deployment refers to the upscaling of pilot facilities, or to the first-in-kind equipment and facilities which cover the steps subsequent to the pilot line including the testing phase, but neither mass production nor commercial activities.[2]

[2] A definition can be found in the IPCEI Communication from 2014, in footnote 1 in the annex to the Communication from the Commission,"Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest", 2014/C 188/02.

Additionally, in regard to the last sentence of paragraph 5, we would welcome a clarification on whether the costs for the construction of dedicated infrastructure and storage facilities for electricity were intentionally excluded and whether they are eligible for aid under Article 36.

2.5 Articles 36a and 36b – competitive bidding and indicative criteria

We suggest that a derogation to the requirement for competitive bidding is introduced for investments in innovative zero emission vehicles and the refueling/recharging dedicated infrastructure for such vehicles. We find it unlikely that a competitive bidding process would be the appropriate procedure to successfully deploy the most promising and highly innovative technologies.[3] We are of the opinion that competitive bidding is more appropriate for mature technologies with an established market, whereas it does not seem appropriate for commercially immature technologies with no established market, as is the case in the maritime transport with regards to hydrogen fueled vessels.

Moreover, as regards Article 36a (8), it would be helpful if a range of indicative criteria were introduced in this Article or in an annex to the GBER that could document “that no such infrastructure is likely to be deployed on commercial terms within three years from the entry into application of the aid measure”. Such criteria could be based on location or low traffic base. Unless such guidance is provided, it will be very difficult to foresee what will potentially be commercially attractive in a 3-year period, given the rapid technology and business model development in the field of transport.

3 Aid for research and development and innovation

3.1 Article 25 (3)(e) – increased flat rate

We welcome the possibility to use a simplified cost approach to calculate indirect costs of R&D projects. However, in our opinion the flat rate should be increased to 20%. We think that a rate of 15% will provide too low cost coverage, and that a higher rate will make the simplified approach more relevant to use.

3.2 Digital Innovation Hubs, Research Infrastructures and Testing and Experimentation Infrastructures

Paragraph 3 of the Preamble, states that Digital Innovation Hubs, including those under the Digital Europe Programme, "may qualify as an innovation cluster by themselves in the meaning of this Regulation". In our opinion, research infrastructures and testing and experimentation infrastructures should also qualify as innovation clusters by themselves, and aid for the construction or upgrade of these types of infrastructures should be granted

[3] That is projects with a high strategic value, that are highly innovative, economically feasible and with good future perspectives.

according to GBER Article 27 Aid for innovation clusters. In that case, there would be no need for Article 26 Investment aid for research infrastructures and the proposed new Article 26a GBER Investment aid for testing and experimentation infrastructures.

4 Aid for access to finance for SMEs - Article 21a

We generally support the proposal of this Article, which is drafted with provisions that are more relevant and easily applicable for risk finance aid in the form of tax incentives. However, we have a few remarks regarding paragraphs 4 and 5, respectively.

4.1 Article 21a (4) – indirect investments and mergers

According to Article 21a (1), risk finance aid in the form of tax incentives covers both direct and indirect investments. Furthermore, it follows from paragraph 4, which applies to direct investments only, that the shares in the eligible undertaking shall be kept for at least three years. In our view, it needs to be clarified whether such a requirement also applies for indirect investments under the scheme. For instance, if the independent private investor invests in the eligible undertaking through a holding company, is the independent private investor required to maintain the indirect ownership of the shares for three years? Furthermore, it would be useful if the provision clarified how the requirement to keep the shares is to be understood in the case of a merger. That is, if the holding company, or the eligible undertaking itself, is merged with another company, will the shares be deemed to be “kept”?

4.2 Article 21a (5) – deduction of share deposit in a start-up company

We are a bit uncertain as to the meaning of the first sentence of Article 21a (5), which reads: “*The maximum tax relief shall not exceed the maximum tax liability of the independent private investor for the tax to which the relief applies*." Under the Norwegian tax incentive scheme for start-up companies, an independent private investor is (on certain conditions) entitled to deduct a share deposit in a start-up company from his/her taxable income. In our opinion, there is a need for a clarification on how the requirement is to be interpreted in such a case.

Yours sincerely

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