MINISTERIO DE
ASUNTOS EXTERIORES, UNIÓN EUROPEA
Y COOPERACIÓN

SECRETARÍA DE ESTADO
PARA LA UNIÓN EUROPEA

D.G. DE COORDINACIÓN DEL MERCADO INTERIOR
Y OTRAS POLITICAS COMUNITARIAS

COMMENTS FROM SPAIN

PROPOSAL TO AMEND THE GENERAL BLOCK EXEMPTION REGULATION (GBER)

First Advisory Committee, 7 December 2021

The Spanish authorities thank the European Commission for the proposal to amend Regulation No 651/2014 of 17 June 2014 ("General Block Exemption Regulation" or GBER), submitted on 6 October 2021, as well as for the effort made to align this standard with the new strategies of the European Union in the environmental, digital and industrial fields.

The Commission is also invited, once the amendment of the Regulation has been adopted, to draw up and publish guidelines/guides/FAQs addressed to Member States to facilitate the application and interpretation of the Regulation.

I — COMMENTS ON AID FOR ENERGY AND THE ENVIRONMENT

1. GENERAL COMMENTS

- Would Commission Regulation (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) No 794/2004 as regards notification forms and information sheets change to adapt to the new guidelines?

- GBER should not create a framework to support fossil fuel consumption. This cross-cutting issue applies to topics such as non-renewable hydrogen or natural gas in cogeneration plants.

- We suggest avoiding the inclusion of low-carbon hydrogen in the entire GBER. Renewable hydrogen shall be defined in accordance with the description provided in the EU Hydrogen Strategy.

- "Renewable hydrogen" is hydrogen produced by water electrolysis (in an electrolyser, powered by electricity) and electricity from renewable sources. Greenhouse gas emissions over the entire life cycle of renewable hydrogen production can also occur through reforming biogas (instead of natural gas) or biochemical conversion of biomass, if sustainability requirements are met.

- It is not clear whether the infrastructures designed for testing and experimentation will include the first production units of a specific product (e.g. H2 fuel cells). This infrastructure could significantly reduce the production costs of the first production units by achieving economies of scale and promoting greater competition.

- What about energy groups? Do they have the same consideration as Digital Innovation Hubs?

- Hydrogen value chains, including production, transport, distribution and consumption, should be exempt from environmental and other taxes.

- Do we agree with the definition of low-carbon H2? Fossil hydrogen with carbon capture and storage or electricity-based hydrogen, where that hydrogen achieves life cycle greenhouse gas emission savings of at least [73.4 %] [resulting in life cycle greenhouse gas emissions of less than 3 tCO2eq/tH2] relative to a fossil fuel comparator of [94 g CO2e/MJ (2.256 tCO2eq/tH2)]. The carbon content of the electric base hydrogen shall be determined by the marginal generation unit in the bidding area where the electrolyser is located in the imbalance settlement periods when the electrolyser consumes electricity from the grid.

- Energy Storage: In this version of the GBER proposal, energy storage is not considered as an infrastructure, nor is it included in the definition of energy infrastructure nor included in Article 48. However, it is not clear under which article of the GBER storage, hybrid with renewable energy as a stand-alone, can be included.

  Spain considers that energy storage should be covered by the GBER since:
  - Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 concerning common rules for the internal market in electricity and Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019. 2019 on the internal electricity market indicate the importance of promoting energy storage as a key factor for increased penetration of renewables, together with the full participation of energy storage in electricity markets.

  - The Spanish National Energy and Climate Plans 2021-2030, approved by the European Commission, include the introduction of 6 GW of additional energy storage energy by 2030

  - Spain is an “energy island”, with an electricity interconnection ratio below 5 %, below the target of 10 % in 2020 and 15 % in 2030. Flexibility in the form of energy storage is key to ensuring security of supply in a scenario of increasing the penetration of renewable energy.

- A transition phase between the current GBER and the new GBER is required.
- Could aggregators, demand management, digitalisation, new energy business models, etc. be reflected in the GBER?
- We propose to limit the administrative burden as far as possible. For example, Article 36(a) states:

'8. The need for support to incentivise the deployment of recharging or refuelling infrastructure of the same category shall be established through a prior open public consultation or an independent market study. In particular, it shall be established that such infrastructure is unlikely to be deployed on commercial terms within three years of the entry into force of the aid measure.

The obligation to conduct an ex ante open public consultation or an independent market study laid down in the first subparagraph shall not apply to aid for the construction, installation, upgrading or extension of recharging or refuelling infrastructure which is not publicly accessible.'

Given the current state of development of the infrastructure for electric vehicles (VE's), it seems disproportionate to request such consultation or study, it will be an administrative burden which will considerably delay the granting of aid. However, that being the case, we propose to establish a minimum threshold of 15 % BEV of the total number of vehicles (M1 and N1) registered in the Member State concerned as a prerequisite for requiring the above-mentioned consultation or study.

- Aid to the fisheries and aquaculture sector — We propose to include "subsidies for the protection of the environment" within the scope of Article 1.3.a

- How will the energy and climate targets for high-efficiency cogeneration be justified?

- Why is security of energy supply, which is included in the proposed guidelines for state aid for climate, environment and energy, and which includes storage, not included in the GBER?

2. DEFINITIONS (ART.2)

(101)- Environmental protection — We agree with the proposed new definition for "environmental protection", although we propose to strengthen it by including at the end of the phrase "***and other air pollutants";****":*

101. "environmental protection" means: any measure designed to remedy or prevent damage to the physical environment or natural resources caused by human activities, including adaptation to and mitigation of climate change, to reduce the risk of such damage or to promote more efficient and sustainable use of natural resources, including energy saving measures and the use of renewable energy sources and other techniques for reducing greenhouse gases ***and other atmospheric pollutants;***

(109) — The implications of not considering renewable energy that is discharged from energy storage should be explained. We understand that for statistical reasons it is necessary to avoid double counting, but we consider it necessary to delete, for practical purposes, the last part of the sentence of definition 109:

(109) 'energy from renewable sources' or 'renewable energy': energy from non-fossil renewable energy sources as defined in point (1) of Article 2 of Directive (EU) 2018/2001,

as well as the proportion in terms of the calorific value of energy produced from renewable energy sources in hybrid plants that also use conventional energy sources and includes renewable electricity used to fill storage systems connected behind the meter (installed jointly or in addition to the renewable installation), ~~***but excludes electricity produced as a result of storage systems; '***~~

3. AID FOR ENERGY AND THE ENVIRONMENT

3.1. Aid for environmental protection (Art.36)

- Article 36(1) The inclusion of low carbon hydrogen should be avoided
- Art. 36.2b. Clarification of Art. 36.2.b, as the manufacture of electrolysers could increase greenhouse gas emissions.
- Article 36(5). Clarify what the discount rate would be for analysing the contractual investment.
- Article 36.8. Regarding the need for an ex ante consultation or market study as a prerequisite for the development of a support scheme for public charging stations for electric vehicles, our comments have been set out in the general comments section.
- Article 36a(2) The inclusion of low carbon hydrogen should be avoided.
- Article 36a(4). It's said*: 'Aid under this Article shall be granted in a competitive tendering process'.*
  We believe that the competitive competition process should not be mandatory in all cases, since, although it may be recommended for public access recharging on roads, it would not be mandatory for a private recharging or in the service sector, where aid should be given through simple competition, only to meet the requirements of the call. This would speed up and make a more dynamic deployment.
- Article 36(a)(9) states:

  "By way of derogation from paragraph 8, aid for recharging or refueling road vehicle infrastructure shall be presumed when vehicles powered exclusively by electricity (to recharge infrastructure) or vehicles powered at least partially by hydrogen (to refuel infrastructure) represent respectively less than 2 % of the total number of vehicles of the same category registered in the Member State concerned. For the purposes of this paragraph, passenger cars and light commercial vehicles shall be considered as part of the same category of vehicles.'

  Our proposal is to raise the threshold of 2 % to at least 15 %. This is not an appropriate market with 2 % EV of the total number of vehicles, there is no commercial case for publicly accessible infrastructure under that condition.
- Article 36(b)(4)

  It says: *'Aid under this Article shall be granted in a competitive tendering process as defined in Article 2.'*

In the case of incentives for the purchase of clean and zero-emission vehicles, a competitive competition process should not be required to award the aid, as the incentives should be given to those purchases that meet the requirements specified in the calls.

- The energy efficiency requirements for additional support should be linked to what is already being done at RRF level (primary energy saving 30 % instead of 40 %):

"6a. The aid intensity may be increased by 15 percentage points for aid granted to improve the energy performance of buildings referred to in paragraph 3a, where energy efficiency improvements result in a reduction of primary energy demand by at least 40 % in the case of renovation of existing buildings."

- Can FTM (Before the Accounting) energy storage be included in Art. 36, both hybrid with renewable energy and autonomous? Whereas, according to the innovation fund, it reduces renewable energy discharges and thus reduces emissions, especially for an 'energy island' such as Spain.

3.2. Aid for the promotion of energy from renewable sources (Art. 41 and 43)

In Articles 41 and 43, subsidised fuels must be manufactured from the raw materials listed in Part A of Annex IX to the Directive in order to be exempted from the notification requirement. We understand that this provision is intended for biofuels, transport biogas and bioliquids. Biomass fuels should therefore not be included within the scope of that provision. Article 41(2) and Article 43(3) should therefore be amended as follows:

41.2. Investment aid for the production of biofuels, biogas for transport and bioliquids, ~~biogas and biomass fuels~~ shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the subsidised fuels are in conformity with sustainability and the greenhouse gas emission saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts and are produced from feedstocks listed in Part A of Annex IX to that Directive.
43.3. Operating aid for the production of biofuels, biogas for transport and bioliquids, ~~biogas and biomass fuels~~ shall be exempted from the notification requirement of Article 108(3) of the Treaty only to the extent that the subsidised fuels are in conformity with sustainability and the greenhouse gas emission saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts and are produced from feedstocks listed in Part A of Annex IX to that Directive.

- Article 41. Please explain why in renewable hydrogen projects consisting of an electrolyser and one or more renewable generation units behind a single grid connection point, the capacity of the electrolyser shall not exceed the combined capacity of the renewable generation units.

- Please explain why renewable infrastructure dedicated to the production of renewable hydrogen cannot be financed under Art. 41.

- What is BTM (Behind the Counter) considered in the context of energy storage? Please, it would be very useful to have a definition of BTM energy storage. Please explain why only BTM energy storage is included and not FTM.

- Please clarify what it means that energy storage should have at most the same capacity as generation:

  "(1a)... The investment in storage shall have at most the same capacity as the connected renewable investment.'
- Please explain why the aid intensity for energy storage is lower than that of renewable generation. Consider increasing the aid intensity for energy storage, considering that energy storage has a funding gap greater than renewable generation.
- The new paragraph 4 bis should avoid any reference to natural gas:

  "4a. Investment aid for high-efficiency cogeneration shall be exempted from the notification requirement of Article 108(3) of the Treaty only if it does not relate to cogeneration plants fuelled with fossil fuels, with the exception of natural gas, which meet the 2030 and 2050 climate targets.';
- The response to the claim should be explicitly included. The wording of the section related to the construction sector already allows, but should be extended to other sectors (e.g. tertiary, industry).
- Art. 41.10.ii. It includes as a requirement that *"the expected number of tenderers will be sufficient to ensure effective competition".*
  It is not clear how you can prove this ex ante.
- Are there any requirements related to self-consumption in entities not subject to the GBER (e.g. public entities)? Article 43 defines low-capacity renewables as those of less than 400 kW.

  In our experience, this threshold should be increased to 1 MW.
- Renewable energy communities are mentioned in art. 43 saying:

  "2a. Aid to renewable energy communities shall be exempted from the notification requirement of Article 108(3) of the Treaty only for projects with an installed capacity of less than 1 MW undertaken by entities meeting the definition of renewable energy community.'

  We propose:

  raise the threshold (1 MW in the current draft) and mention it to include the phrase "less or equal to". As regards this threshold, it should be mentioned that it applies to both electrical and thermal applications.
  B) Include within the scope of article 43. 2a the citizen energy communities.
  to include in article 41 exactly the same treatment of renewable energy communities and citizen energy communities as that contained in article 43.

3.3. **Aid in the form of tax reductions under Directive 2003/96/EC**

Paragraph 2 of that article states that: "*The beneficiaries of the tax reduction shall be selected on the basis of transparent and objective criteria, and must pay at least the Union minimum level of taxation set out in Directive 2003/96/EC.*" We understand that this is incompatible with Article 16 of the draft ETD which provides for a **total exemption** for certain products in some form beneficial to the environment (electricity from renewable sources, for example).

3.4. **Investment aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity or the implementation of nature-based solutions for climate change adaptation and mitigation (Art. 45)**

- We would like to convey our support for the extension of the scope in this chapter, as we consider it necessary to open up the possibility of receiving support for these activities. For example, under the current Regional Guidelines, investments in the production of biofuels (food or forestry), as well as recycling plants for biofuel production, were excluded from regional aid, as confirmed by the Commission.

- Similarly, the 'Guidelines on Environmental and Energy Protection 2014-2020' do not include the possibility of granting such investments, but at a later stage (energy generation plants with the use of biomass). In this way, these investments could not be supported by either of the two aid schemes.

- In terms of mitigation, the extent of the scope also seems very positive. However, it is difficult to decide how to fit those projects that aim to replace fluorinated gases in air conditioning, cooling and other equipment with gases with less or no global warming potential.

- Finally, we consider this draft as an opportunity to harmonise the sectoral scope of regional aid (exclusion of lignite, inclusion of synthetic fibres and shipbuilding, exclusion of aid for broadband infrastructure and research in the section on regional aid, clarification on the definition of transport and energy sectors). We hope that this will allow the intermediate stages of renewable energy production, a source of activity in rural areas, not to become a bottleneck so that biomass can be used as certified pellets, rather than wood which is harmful to air quality.

3.5. **Investment aid for resource efficiency and for supporting the transition to a circular economy (Article 47)**

In general, we consider the proposed Art. 47 includes most types of investment and improves the waste hierarchy. However, in our view, some wording in the text still needs to be clarified:

- Some activities should be described more explicitly in the text. For example, we understand that activities related to water/waste water efficiency, reuse and

preparation for reuse are included in paragraphs 2(c) and 2(d). But this is an interpretation of the definition of "other products, materials or substances".

- In point 5, we understand that when you say "collection" you should say "separate collection", could you confirm this point?

- Point 6 states that investments should go beyond established or economically profitable business practices that generally apply across the Union and to all technologies. From a technological point of view, we believe that investments should lead to a higher degree of recyclability or higher quality of recycled material compared to standard practice. Could you clarify whether it can be interpreted as ecodesign, necessary to improve the entire life cycle of the product to support the transition to a circular economy?

II — COMMENTS ON AID FOR R & D & I

1. GENERAL COMMENTS

In particular, in the field of R & D, the introduction of the simplified methodology for calculating indirect costs is particularly welcome.

On the other hand, the absolute need for the Commission to amend the GBER in a coordinated and parallel manner with the revision of the other aid guidelines, including the Framework for State aid for R & D & I, is again underlined.

That is, common concepts, definitions, conditions and procedures in the GBER and the Framework must be perfectly aligned. This will lead to greater consistency and efficiency of the regulatory framework applicable to State aid for R & D & I.

2. AID FOR INNOVATION

The comments made by Spain on the regulation of this aid in the draft R & D & I aid framework highlighted the need to align the definitions of innovation with the Oslo Manual and, consequently, proposed the elimination of the distinction between organisational and process innovation.

The proposed GBER text maintains this distinction between "process innovation" and "organisational innovation" (Article 2(96) and 97).

Product innovation is not covered, but the above two definitions, taken together, may be close to what the Oslo manual defines as "business innovation", albeit less concrete.

It is therefore suggested that the Commission revise these definitions in order to better align the Oslo Manual using a single definition.

3. DEFINITION OF EXPERIMENTAL DEVELOPMENT

The definition of experimental development of the GBER and the R & D & I Framework indicates that the R & D & I Framework may include the development of prototypes or pilot projects that can be used commercially "where they are necessarily the final commercial product and their manufacture is too burdensome for its exclusive use for demonstration and validation purposes" (paragraph 86, Article 2).

The term "too onerous" was an indeterminate legal concept that should be clarified, since it was not obvious to determine when a prototype might have commercial use.

Therefore, the Commission is again urged to clarify (in the Framework/RGEC or in guidelines/FAQs) the concept "too onerous" and to provide guidelines for calculating the onerousness of the prototype and the objective elements or criteria to be used for this purpose (e.g. sales or turnover of the company, market parameters or others).

On the other hand, it appears that regulatory test environments ('sandbox') could be understood as included in the definition of experimental development of GBER, referring to the 'test and validation of new or improved products, processes or services in environments representative of real-life operating conditions'. It would be useful for the Commission to clarify this, in view of the growing importance of this figure, either in the text itself or in the guidelines/FAQs.

4. SIMPLIFIED COSTS

The proposed text simplifies the conditions for R & D support by proposing to use a simplified cost approach to calculate the indirect costs of R & D projects in the form of a lump sum of up to [15 %] applied to the total eligible direct costs of the R & D project.
The Commission is grateful for this important change.

However, the Spanish authorities propose to increase this percentage to 20 %-25 %, as it is more in line with the reality of companies undertaking R & D projects, in the light of the practical experience of the Spanish authorities in the financing of R & D projects, and more consistent with what is foreseen in the Horizon Europe programme.

Furthermore, Article 7(1) of the text stipulates that the amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 or Regulation (EU) 2021/1060 of the European Parliament and of the Council, as appropriate, provided that the operation is financed, at least partially, by a Union fund allowing the use of those simplified cost options.

It should be noted that the simplified cost options foreseen for indirect costs in the Structural Funds Regulations are different from those provided for in the GBER proposal for R & D projects.

This implies that, depending on the source of funds (EU or national), national authorities will have to apply different methods to calculate indirect costs in R & D projects, which entails a greater administrative burden and bureaucratic complexity, to the detriment of the simplification objective pursued by the Regulation.

The Commission is therefore invited to review the relationship between Articles 7(1) and 25(3)(e) by allowing the use, in addition to a fixed percentage of total costs, in R & D projects of the system provided for in the rules applicable to EU funds to calculate indirect costs at a flat rate of up to 15 % of the direct eligible personnel costs[1].

5. DEFINITIONS OF RESEARCH INFRASTRUCTURE AND TESTING AND EXPERIMENTATION INFRASTRUCTURES (TECHNOLOGICAL INFRASTRUCTURES)

A new definition of testing and experimentation infrastructure (equivalent as indicated in the text to technological infrastructure) is proposed, which provides support for industrial research and experimental development and that its users will be mainly enterprises (Article 26a).

There seems to be no provision for these infrastructures to carry out economic and non-economic activities and, consequently, there is no provision for the separation of accounts or the forecasting of a claw-back mechanism. The text should explicitly clarify that these requirements are not enforceable in these infrastructures for greater legal certainty.

The maximum intensity envisaged (25 %) should also be increased, assuming that these infrastructures carry out not only experimental development but also industrial research.

Moreover, the proposed text of the GBER does not regulate the concept of "capacity" or the ex-post control mechanism for the ancillary economic activities of research infrastructures, relevant and indeterminate concepts which are covered by the R & D & I Framework and the clarification of which has been repeatedly requested from the Commission by the Member States. These concepts should be addressed in the GBER and are a clear example of the reasons why the revision of the GBER is requested in a coordinated manner with the R & D & I Framework.

6. INNOVATIVE COMPANIES IN DIFFICULTY

In the comments to the Framework made by Spain, the Commission was asked to examine the possibility of excluding innovative SMEs (as defined in Article 2(80) of the GBER) from the concept of firms in difficulty as regards aid for R & D & I, for the following reasons:

[1] Article 54 of Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund, as well as the financial rules for those Funds and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

— Since the business model of R & D intensive companies is characterised by the fact that they can accumulate losses for several years until their projects are launched on the market.
— Given that the Commission itself, in the guidelines on risk finance aid, refers to these companies, in terms of which it recognises the difficulty of generating returns in the short term since their inception.
— Since the results of the fitness check recognise that the criterion of the disappearance of share capital may be fulfilled without necessarily implying non-compliance with its payment obligations.
— As companies in this situation are conducting investigations into vaccines and treatments against COVID 19 without being eligible for aid.

The proposed text does not bring about any change in this direction as regards R & D & I aid, although it does take into account the special circumstances of innovative firms for the purposes of risk finance aid.

It does not seem consistent for innovative companies to be treated more favourably for risk capital aid and, however, those same specificities are not taken into account in order to qualify for R & D & I aid.

In particular, it should be recalled that the market failure justifying the granting of both aid to innovative undertakings is the same: imperfect and asymmetric information, which hinders its financing by the market.

While risk finance may be less distortive of competition, the fact remains that its amount is usually higher than that of R & D aid. Moreover, the time during which innovative SMEs are not considered in crisis for the purpose of obtaining R & D aid may be limited (e.g. 7 years after their first commercial sale, as in the case of risk aid).

In view of the above, it is proposed to the Commission the following wording of Article 2(18)(a) and (b):

"(a) in the case of a limited liability company (other than an SME with less than three years of age or, for the purposes of the criteria for eligibility for risk finance aid, an SME that meets the requirements of Article 21(3)(b)and which meets the conditions for receiving risk finance investments following due diligence checks by the selected financial intermediary or, for the purposes of the criteria for eligibility for R & D & I aid, an innovative SME, as defined in Article 2(80), which has been operating on any market less than seven years from the time of its first commercial sale), where more than half of its subscribed share capital has disappeared as a result of accumulated losses; (....)

in the case of a company in which at least some members have unlimited liability for the company's debt (other than an SME less than three years old or, for the purposes of the eligibility criteria for risk finance aid, an SME that meets the requirements of Article 21(3)(b) and meets the conditions for receiving risk finance investments following due diligence checks by the selected financial intermediary; or for the purposes of the eligibility criteria for aid for R & D & I, an innovative SME, as defined in Article 2(80), which has been operating on any market less than

seven years since its first commercial sale), where it has disappeared due to accumulated losses more than half of its own funds shown in its accounts;(....)

7. ELIGIBILITY OF CERTAIN ASSETS WHEN SUPPORTED BY R & D & I AID

The Commission proposes to exclude from regional aid the costs of buildings, land and equipment as long as they receive support under the GBER rules on aid for R & D & I projects. Specifically, regional aid is excluded from the scope of regional*aid "to cover investment costs in buildings, land and equipment in so far as they form part of a project supported under Article 25 and as long as this is the case*" (Article 13).

In addition, in the case of investment aid for SMEs, the costs of acquiring tangible and intangible assets are no longer eligible if they are supported by aid for R & D & I projects: *'One or more of the following costs shall be eligible: investment costs in tangible and intangible assets, provided that they are not subject to Article 25*" (Article 17.2)

First, it is not clear why this limitation relates only to aid to R & D & I projects, since other aid also finances assets. Until now, both regional aid and investment aid for SMEs were compatible with R & D aid provided that the cumulation criteria were met. The reason why the limitation is not established on the basis of the rules on the cumulation of aid is not understood.

On the other hand, the inclusion of this ceiling in Article 13 on the scope of regional aid does not seem to be the most appropriate, since it seems to call into question the compatibility of this aid with R & D. If this provision were maintained, it would bebetter in line with Article 14(4) on the eligible costs of regional aid.

In addition, the terminology used in the text is confusing: Article 13 refers to 'equipment costs...'; Article 17.2 a "investment costs in tangible and intangible assets" and Article 25.3 to "equipment and equipment costs". It would be appropriate to unify the name of these concepts if they relate to the same costs.

It is therefore proposed to delete the changes to Articles 13 and 17 or alternatively to improve their wording and system.

8. DIGITALISATION

The Commission proposal explicitly mentions digital products, processes and services in the definitions of industrial research and experimental development, process innovation and organisation.

However, aid for R & D or innovation is not always sufficient to support the digitalisation of SMEs, and other categories of aid (e.g. investment for SMEs) need to be applied in addition, making it difficult to finance these projects.

Therefore, in the interests of simplification and in order to be able to finance the costs inherent in digitisation with due legal certainty, in particular the acquisition of assets, the Spanish authorities propose:

- Modification of eligible costs in process and organisational innovation support to include the purchase of equipment and assets necessary for digitisation; or

- Alternatively, if the Commission considers this to be more appropriate, the creation of a sub-category within the R & D & I aid "aid for the digitisation of SMEs" covering asset acquisition costs as well as staff costs.

  Note that the Regulation itself already provides for a specific sub-category of aid for the digitisation of SMEs, within the R & D & I aid from financial products supported by the InvestEU Fund (Article 56e(9)(vi)), with a ceiling of EUR 30 million per project.

9. OTHER COMMENTS

9.1 Definitions applicable only to certain categories of aid

Article 2 of the GBER provides for multiple definitions, many of which apply only to certain categories of aid, where they are rather general definitions, i.e. applicable to several types of aid.

By way of example:

- The definition of "digitalisation" is restricted to the field of the environment (Article 2, paragraph 103c). This is paradoxical that the regulation itself makes it possible to finance digitisation in other categories of aid, for example under the Invest EU instrument or in support of culture.

- The definition of 'small mid-cap' (paragraph 103e) is again limited to environmental aid but is, however, a term applicable in Invest EU and venture capital and could apply to R & D.

- The new definition of "new and innovative technology" (paragraph 114) as "a new and recently validated technology, compared to the current state of the art in the sector, which implies a risk of technological or industrial failure and which is not an optimisation or development of an existing technology". It is a rather generic definition and, however, its application to the environment is limited again.

In short, these concepts should form part of the common definitions applicable to all categories of aid (Article 2(1) to (26)).

On the other hand, there are other definitions that are relevant to aid but do not appear in the GBER. This is the case for the term "mid-cap" as defined in the risk finance aid guidelines, but not incorporated into the Regulation.

The Commission is therefore invited to review the definitions of the GBER and its applicability to the various aids, as well as its alignment with the definitions contained in the different aid guidelines, in the interests of regulatory coherence and legal certainty.

III — REGIONAL AID: THE INCENTIVE EFFECT

The text amends Article 6 GBER on the incentive effect to require, in the case of ad hoc regional aid to large enterprises, that the profitability verification be carried out in relation to any part of the European Economic Area (EEA).

This amendment does not seem to make sense and its objective is clear, as if there are other places in the EEA where the investment would be profitable, the aid could not be granted. This indirectly incentivises large companies not to invest in unprofitable assisted areas as long as they can obtain profitability in other countries or areas, although they do not even need to be assisted. The principle of cohesion, which is the basis for regional aid, seems to be ignored in this case.

On the other hand, this verification may result in a high increase in work for both the applicant and the granting authorities who must contrast the declarations of the applicant in order to assess their veracity, thereby increasing the administrative burden.

IV — AID FOR NEW BUSINESS PROJECTS

The possibility introduced in Article 22 of the GBER for aid for new business projects to take the form of a transfer of intellectual property rights from a research organisation is highly appreciated, although it is suggested that the licence of such rights should also be included as a form of aid.

On the other hand, it is proposed to include tax advantages as another form of aid to these companies. Indeed, tax incentives are not currently covered by any of the entrepreneurship support instruments provided for in Article 22 of the GBER, which only covers grants, guarantees and loans. In this regard, we consider it very important to include a reduction in the tax rates for these start-up companies, in order to facilitate the start-up of their new business projects. This type of aid would hardly have distorting effects on the market and, on the contrary, its effects would be enormously positive.

V — CUMULATION OF AID

It is not clear how 100 % of the project costs can be achieved by respecting the GBER intensities, unless public funding is considered both from the European Defence Fund and from the Member State and the latter is limited by the intensity of the GBER. This is one of those points where the Commission should clarify the text in the sense set out above and in the event that other centrally managed EU aid is involved.

VI — TRANSPARENCY OBLIGATIONS

The reform proposed in Article 9(1)(c) concerning the obligation to publish all individual aid in excess of EUR 100 000 is considered disproportionate and entails an increased administrative burden for aid granting administrations.

VII — TRANSLATION ERRORS

The last sentence of the definition of a research organisation (Article 2.83) states: “undertakings which are able to exercise decisive influence over such entities, for example as shareholders or members, may not have preferential access to the results it generates”, i.e., as this sentence is worded in the Spanish version, preferential access for the undertakings to which it refers will be an optional or optional condition. Moreover, the fact that these undertakings do not have a preferential right of access will not be a normal but rather extraordinary circumstance.

However, the French version states: ‘Les entreprises qui peuvent exercer une influence déterminante sur une telle entité, par exemple en leur qualité d’actionnaire ou d’associé, ne peuvent pas bénéficier d’un accès privilégié aux résultats qu’elle produit’ and the English version reads: “Undertakings that can exert a decisive influence upon such an entity, in the quality of, for example, shareholders or members, may not enjoy preferential access to the results generated by it”.

In both languages, preferential access for the undertakings concerned is simply prohibited.

The Commission is requested to correct this translation error.

Madrid, 14 December 2021