



15 July 2013

### **BUSINESSEUROPE VIEWS ON THE REVISED DRAFT GENERAL BLOCK EXEMPTION REGULATION**

#### **1. Introduction**

BUSINESSEUROPE welcomes the opportunity to provide comments to the revision of the General Block Exemption Regulation.

BUSINESSEUROPE supports the Commission initiative and believes that simplification and clarification of the different state aid rules is necessary. In general, BUSINESSEUROPE holds the view that the GBER provides tangible advantages. It is important that block exemption regulations are clear, that all relevant information is accessible about block exempted aid, and that the Commission carefully monitors the implementation of the rules.

However, on the one hand BUSINESSEUROPE has some concerns about the opportunity of increasing ceilings and intensities of aid, and widening the scope of block exempted aid, which would lead more significant amounts aid to be excluded from the Commission's scrutiny. An increased decentralization might lead to a more subjective and less uniform application of state aid rules in the different Member States leading to additional risks of competition distortions in the single market and legal uncertainty.

On the other hand, we question a discrimination of beneficiaries based on their size, through the introduction of more stringent criteria for non-SMEs. If agreed as proposed, and taken together with similar measures in the ERDF, RAG, and in the Cohesion Policy Common Regulations these criteria represent a general trend towards a serious limitation for non-SMEs in accessing European and national investments tools.

This approach fails to recognise the positive effect that investments by larger enterprises can have on regional and national economies, and will unnecessarily restrict the ability of Member States to counter the economic crisis and the critical unemployment situation. The selection of investment projects for support through State Aid should be based on their quality, contribution to the objectives of Europe 2020 and their ability to address key issues in the region - and not primarily on the size of the enterprise.

We have noted that the draft enabling regulation might possibly lead to new categories of state aid being exempted from notification. In this context BUSINESSEUROPE will reserve the right to provide additional comments on a later stage.



## **2. General aspects**

### **Scope**

BUSINESSEUROPE is concerned on the proposal to limit support for larger investment projects. The restriction to aid schemes for which the planned or effective yearly public expenditure exceeds 0,01% of the Member State's GDP set out in Article 1(2)(a), may hamper economic growth and regional development. State aid schemes should be assessed on their quality, their contribution to the EU 2020 goals and their ability to address the problems of the respective region. Therefore, BUSINESSEUROPE suggests removing any ceiling for the investment schemes.

The proposal should retain the alternative option to delete Article 1(4)(d), allowing the application of the GBER to ad hoc aid to large companies. Excluding large enterprises would actually negatively affect also SMEs which often form an "eco-system" with larger companies. This is crucial to attract significant investments and address the economic and employment crisis. We point out however that the additional requirements proposed in article 6.3 would imply major extra work for all companies which are not SMEs, to produce the documents required and make them suitable for this specific purpose, as well as additional verification work for Member States.

Finally, BUSINESSEUROPE greatly appreciates the explicit reference to the European Court of Justice's Deggendorf case-law in article 1(4)(a), clearly stating that the GBER aid will not be applicable to companies, which are subject to an outstanding recovery order following a previous Commission decision declaring the aid illegal and incompatible with the common market.

### ***Definitions and categories of block exempted aid***

As the definitions of "undertaking" (annex III, note 13) and "enterprise" (annex II, article 1) in the draft are very similar, we suggest using the same term consistently across the regulation, to avoid confusion and possible uncertainties.

We appreciate the new re-categorisation of aid measures, as well as the introduction of a number of new categories of block exempted aid for SMEs, and notably risk finance and Start-up aid.

### ***Notification thresholds***

For the sake of clarity, article 4 should specify if the thresholds per undertaking in article 4 apply separately for each legal entity within a group of companies.

We support the increase the notification thresholds for R&D aid, as it is consistent with stimulating sustainable economic growth. At the same time, we agree with the notification exemption for experimental development, which makes the GBER coherent with the R&D Framework.



### ***Incentive effect***

While we understand the purpose of requiring an incentive effect, we have stressed several times in the past that it is in practice very difficult to measure the incentive effect. We are concerned that the provisions under article 6 may lead to legal uncertainty and administrative burdens.

Companies may not know whether the documentation provided is sufficient and certain requested information in the application form and the declaration specifying aid received for projects in the last 3 years may be extremely burdensome. The declaration specifying aid received or to be received for the same project by other authorities may hinder complex pan-European collaborative projects.

Therefore, BUSINESSEUROPE suggests that these two information requirements are removed from the application form.

Furthermore, the supplementary option in para 3 can create barriers for large companies projects that could be block-exempted. This will consequently reduce the ability of Member States to quickly address structural problems of their economies. Secondly, the undefined “material increase” criterion can be interpreted differently by the Member States that may apply different standards to verify whether the criteria in para 3 are met. Therefore, BUSINESSEUROPE suggests that the regulation clarifies how a “material increase” should be evaluated.

With specific regard to art. 6, 3 (c), we regret that the criterion “material increase in the total amount spent” only pertains to the spending by the beneficiary on the project/activity, whereas the current State aid rules for R&D&I also mention the total R&D&I spending by the beneficiary as a possible reference, either in absolute terms or as a proportion of its total turnover.

### ***SME status***

With regard to the requirement that an SME can only benefit from exemption if it does not lose its SME status within a number of years, it should be specified what the consequences are if an SME becomes a large company.

BUSINESSEUROPE believes that retrospective recalculation of aid intensities and/or recovery of aid would be unjust. As a general principle we oppose an approach that would penalise a company for being successful and growing.

### ***Withdrawal of the benefit of the block exemption***

The power to withdraw the benefit currently only applies to failure by Member States to provide information. The GBER now introduces a more targeted and thus more deterrent sanction for failure to comply in the form of withdrawal of the benefit of the block exemption, which BUSINESSEUROPE fully endorses.

According to article 11 the Commission “may” adopt a decision stating that all or some of the future aid measures adopted by the Member States are to be notified to the



Commission. This could be strengthened by changing the word "*may*" to "*shall*", thereby enforcing stricter compliance with the rules.

### ***Monitoring and reporting***

Enhanced monitoring and transparency are essential to reduce the risks of increased decentralisation of State aid control. It is important that block exemption regulations are clear, that all relevant information is accessible about block exempted aid and that the Commission carefully monitors the implementation of the rules.

BUSINESSEUROPE therefore supports the new obligations with regard to transparency, requiring Member States to publish key information on a single website after the granting decision, as well as committing the Commission to publish on its website links to the above websites of all Member States.

In addition, BUSINESSEUROPE welcomes the proposed sanction for failure to comply in the form of withdrawal of the benefit of the block exemption as set out in Article 11. However, in order to reinforce monitoring and to reduce information requirements for companies, notification of future aid measures should be made mandatory in case a Member State does not provide the information needed to monitor application of the regulation or does not provide valid justification for its failure to comply within a reasonable time.

### **3. Specific categories of block-exempted aid measures**

As mentioned earlier, BUSINESSEUROPE concurs with the We appreciate the new re-categorisation of aid measures, as well as the introduction of a number of new categories of block exempted aid for SMEs, and notably risk finance and Start-up aid.

#### ***Regional aid***

BUSINESSEUROPE reiterates its disagreement about the proposal to grant regional aid to non-SMEs in "c" regions only for initial investments in favour of new activities in the area concerned. BUSINESSEUROPE strongly believes that limiting the possibility for non-SMEs to receive regional aid can create risks to employment and economic activities in the most affected regions. This can negatively impact SMEs instead of strengthening them because SMEs often benefit from collaboration with larger companies in assisted areas.

Regarding the exclusion of the GBER of aid to a beneficiary that has closed down the same or a similar activity in the EEA in the two preceding years (Article 14(1)(e)), it should be better clarified whether the beneficiary is intended at company level or at group level.

As regards the exclusion of certain sectors from to be block-exempted for regional aid under Article 14 sub 1(a), while BUSINESSEUROPE takes no position on the rightness or otherwise of this exclusion, it needs to be clarified whether these sectors are excluded from the so called "regional bonuses" as well.



### ***Research & development aid***

BUSINESSEUROPE welcomes the proposal to increase the notification thresholds for R&D projects. Research and development lies at the heart of Europe 2020 strategy to make its economy more competitive. It is important to encourage companies to invest in R&D with the aim of stimulating growth and employment.

We welcome in particular the possibilities to further increase the intensities of article 23, 5 (a) under the categories set in article 23, 5 (b) because, to date, industrial research and experimental development efforts have not been sufficiently encouraged by the European funding programmes. However, we recommend a further increase to 10% for investment in commercial usable prototypes and pilot projects, as these are crucial for transforming research into commercially viable products.

With regard to research infrastructure, we note that recital 49 states that the economic activities of a research infrastructure may fall outside State aid rules if they are purely ancillary, i.e. directly related to and necessary for the operation of the infrastructure or intrinsically linked to its main non-economic use, and limited in scope. However, even such ancillary activities may unfairly compete with similar services offered by private infrastructures operating at commercial rates, and have a major impact on their viability. Therefore, BUSINESSEUROPE suggests that such ancillary economic activities of public research infrastructures may only fall outside State aid rules if no similar private sector activity is existing or commercially viable.

Also, according to article 24, only undertakings which have financed at least 50% of the investment costs of the research infrastructure may have preferential access to research infrastructures. This preferential access would be subject to the condition that the same access is granted at market price, is limited in time and that the same preferential-access conditions are made publicly available. Under these conditions, businesses investing in research infrastructures would be at a disadvantage with respect to non-contributing undertakings, which would be able to use the research infrastructures at the same prices without making any upfront investments and carrying any risk. This seems unfair and risks discouraging investment. To maintain an incentive for co-investing and avoid making them pay twice, their investments should be accounted for in one way or another, for example by means of some discount on the market price commensurate to investments made, or pro rata profit-sharing. Such arrangements would be in line with the private Investor principle, as private investors jointly co-investing in private research infrastructures would agree on similar arrangements in their normal course of business.

### ***Training aid***

BUSINESSEUROPE is pleased that the distinction between “specific training” and “general training” is removed as the difference between these two was not clear. In addition BUSINESSEUROPE supports one level of state aid intensity for training as introduced in Article 27(4).

***Aid for environmental protection***

The definition of eligible costs for environmental aid is not clear. As it is important to obtain clear and simple rules, we recommend a clarification of which costs are eligible under Article sub 30(5) sub (a), (b) and (c).

With specific regard to investment aid for high-efficiency cogeneration, we stress that articles 33.3, 33.4 and 37.6 place a restriction on the capacity of a new installation that can receive state aid. Since co-generation, renewables and district heating are objectives that deserve state support, we fail to understand the rationale behind a limitation of these installations' capacity. Also, the project size is already limited by the low notification threshold, so this additional capacity installation is unnecessary from a state aid control perspective.

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