EAPB
European Association of Public Banks
– European Association of Public Banks and Funding Agencies AISBL –

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EAPB comments on the European Commission's second draft for a Regulation amending the General Block Exemption Regulation on state aid measures

The EAPB welcomes the opportunity to comment on the second draft regulation amending the General Block Exemption Regulation (GBER) published on 7 March 2016. Unfortunately none of our key demands expressed in our position paper from 13 October 2016 following the first consultation have been considered. We therefore refer to our previous position paper for further consideration:

http://ec.europa.eu/competition/consultations/2016_gber_review/replies%5Cregistered_organisations%5Cbe_eapb_en.pdf

In addition we would like to insist on following points:

Article 2 (39) – Operating profit of the investment

Following the second draft amending regulation in Article 2 (bold text is new):

(a) point 39 is replaced by the following:

'*(39) 'operating profit' means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid.* ***Discounting revenues and operating costs using an appropriate discount rate allows that a reasonable profit can be made.***'

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EAPB generally welcomes the proposal of the European Commission to allow the use of an appropriate discount rate for all infrastructure financing falling under this definition. In this context, we consider the deletion of the consideration of a reasonable profit in Article 53, paragraph 6, sentence 3) as an adjustment to avoid redundancy.[1]

This amended provision will in particular be relevant for larger infrastructure measures using the internal rate-of-return (IRR) to determine the profitability of the investment. According to our assessment, however, this method is not used by smaller local authorities in smaller projects.

The provision therefore would favor larger projects, or would make it necessary to appoint accounting firms to determine this parameter. However, this does not appear to be appropriate in the case of smaller projects, in particular, because the expenditure incurred by local authorities on the application for aid would be unnecessarily increased.

Without precluding the possibility of an “appropriate discount rate”, we would like to take up our proposal in the context of the first consultation phase and propose the use of a lump sum discount rate as applied in the context of European Structural and Investment Funds (ESIF), in application of Article 61 of regulation 1303/2013. Thus, revenue and operating costs could be discounted at a flat rate of 4%. This is important for the sake of consistency between the GBER and ESIF and to avoid, where possible, too different approaches on a given project. However, in certain justified cases it should be allowed to derogate from this flat rate, for example in the application of the IRR.

EAPB would like to reiterate at this point that the ESIF for the deduction of net revenues after the completion of the project and the rules for taking into account the operating profits of the investment are two different terms for the same economic situation – the determination of the profitability gap/ financing deficit. Against this background, it appears incomprehensible to use two different methods. It should therefore be allowed to apply the procedure from the ESIF for the GBER.

In addition EAPB would also welcome further clarification regarding the determination of the financing gap and the operating profit under "realistic projections" for all exemptions under the GBER.

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[1] Article 53, paragraph 6, sentence 3 of the current GBER is changed as follows in the second Commission draft regulation:

6. For investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism. ~~The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period.~~

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Article 53 - lump sum deduction of operating profits on aid of up to EUR 2 million

The newly proposed Article 53 allows several lump sum deductions in the context of aid to culture and cultural heritage. Since this leads to the facilitation of the application and aid procedures and it does not appear justified to use this approach only in the context of aid to culture and cultural heritage, it should also be applied to other relevant exemptions such as Article 55 and 56, i.e. referring to aid for sport and multifunctional recreational infrastructures and investment aid for local infrastructures.

We would welcome if these points could be considered in the final text.

We thank you for your consideration.

The European Association of Public Banks (EAPB) represents the interests of 30 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

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