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EAPB Position paper on the European Commission’s draft for a Regulation amending the General Block Exemption Regulation on state aid measures

The EAPB welcomes the opportunity to comment on the draft regulation amending the General Block Exemption Regulation (GBER) published on 7 March 2016.

EAPB generally welcomes the proposed extension of the scope of the GBER as well as the adjustments made to it. In particular we welcome the amendment to Article 7, paragraph 1 which will allow applying Structural funds rules in compliance with the simplified cost-options in line with Article 67 and 68 of Regulation (EU) No 1303/2013. We also welcome the extension of eligible costs to accommodation costs in Article 31 paragraph 3 (b) as well as the inclusion of cinemas into the scope of Article 53.

Please find here our further comments:

Article 1 – Scope

The wording “local infrastructures” is misleading. The establishment of infrastructures with a purely local dimension should not fall under the concept of aid under Article 107 TFEU and therewith under the scope of the GBER, as these like the wording “local” indicates are not in a position to distort the Single Market. Only infrastructures with limited investment scope should be considered exempted. We therefore propose to amend the text as follows:

“l) aid for ~~local~~ infrastructures with limited investment scope”

In this context we also refer to our amendment proposal to Article 56.

Excluded sectors

The amending regulation proposes a new version of paragraph 3 and proposes to remove the last sub-paragraph. This is problematic as it would lead to the exclusion of many companies active in several sectors such as the agricultural sector or the processing and

marketing of agricultural goods from the scope of the GBER. Therefore we would suggest not removing the paragraph “*Where an undertaking is active in the excluded sectors...*”).

Article 2– definitions

Application of the definition of “undertakings in difficulty”

There are serious practical difficulties in the application of exemptions of cases where territorial entities are the beneficiaries of aid, linked to the concept of undertakings in difficulties. According to Article 1 paragraph 4 (c) such entities are not in the scope of the GBER. Article 2 no. 18 defines undertakings in difficulty. It appears clearly that the definition was not conceived to cover territorial entities. In this context it should be noted that very often territorial entities in the EU (regions, municipalities etc.) cannot become insolvent.

Therefore we suggest excluding these by adapting the definition of undertakings in difficulty. This very important to increase the legal certainty of infrastructure investments.

Definition of “undertakings in difficulty”

In the re–formulation of the definition of “undertakings in difficulty” in the new GBER following specification in Article 1 paragraph 7 (a) and (b) of the former GBER (Regulation 800/2008) was no longer considered: “*and more than one quarter of that capital has been lost over the preceding 12 months*”)

EAPB would like to note in this context that the change compared to the former GBER is not understandable for our members. The recent development of an undertaking, especially over the last 12 months, is of high importance for the reasonable assessment of the current economic situation of an undertaking as well as for its economic perspectives in the short and medium term. Therefore we would like to suggest re–introduce this specification in the current review of the GBER.

Definition of the gross grant equivalent

Because of unprecise concepts (e.g. “State aid budget”) in several parts of the text it is not completely clear if one can refer to the gross grant equivalent. Especially in Article 1 paragraph 2 and Article 4 it should be specified that the text refers to the gross grant equivalent.

Difficulties in the application of the definition of “dedicated infrastructure”

In Article 2 no. 33 the term “dedicated infrastructure” is defined as infrastructure “*that is built for ex–ante identifiable undertaking(s) and tailored to their needs*”. This definition is very restrictive and does not correspond to the assessment made by the European Commission in its individual Decisions. There are problems in particular with the extension

of infrastructure that also benefits already present undertakings. In such cases it cannot be excluded that the definition is appropriate since the already present undertakings can of course be identified and the extension of the infrastructure will at least not restrict its activities. The exemption from the GBER would bear significant risks. In the Decisions of the European Commission such as Propapier (Decision SA.36147) the dedicated infrastructure is always only assessed for a single undertaking, whereas the above mentioned definition of dedicated infrastructure also appears to apply to several undertakings.

Moreover another key criteria from the Propapier Decision is not considered: the extended use for other users/undertakings which have not been identified at the moment of the establishment should be also included in the definition. This is because in practice only some potential users will be known but not all. Therefore Article 2 should be adapted as follows:

“33 ‘dedicated infrastructure’ means infrastructure that is built for ex-ante identifiable undertaking(s), ~~and~~ tailored to their needs” and cannot be used for a further not yet identifiable undertaking”

“Renewable energy”

We would welcome if the definition could be extended to “battery storage” and “pumped storage plants”

Article 4– notification thresholds

According to the draft regulation new notification thresholds are proposed for sea ports, notably 100/120 million EUR for maritime ports and 20 million EUR for inland ports. Even taken into consideration the rougher conditions for maritime ports and the need for bigger investments into proper resistant material than in inland ports the threshold for inland ports appear to be too low. This should be increased in order to reach more balance between core ports in both areas in light of the objectives of the Trans European Networks (TEN).

However, this should be done in consistency with other GBER provisions: for research projects which as Eureka projects are of European interest the notification thresholds are doubled (see Article 4 paragraph 1 i) and iv)). This approach seems to be also appropriate with regard to core ports of key European interest.

EAPB therefore suggests increasing the thresholds to 50 million for inland ports and to 100 million for ports with TEN relevance.

Article 14 paragraph 7– Regional aid

Article 14 paragraph 7 specifies the amount of aid granted for a diversification of an existing establishment. Here there is a lack of clarity with regard to the definition of reused assets. It is not clear if the definition includes land property and buildings necessary for the production, even when these are not affected by the diversification. An inclusion of such assets would lead to an extremely high threshold in many cases. Therefore we would welcome a clarification which excludes these assets, as follows:

“For aid granted for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works and which are re-used specifically and possibly partially for the diversification.”

Articles 16 and 21– Regional aid for urban development and risk financing

For the design of funds articles 16 and 21 may be misleading as in some countries national and regional promotional banks implementing State aid measures are financial intermediary, investor and fund manager at the same time. An adaptation in line with the provisions in the risk capital guidelines would be welcome.

Article 17 paragraph 4 a) – investment aid for SMEs

According to the current article in the GBER the acquisition of intangible assets is only eligible if the assets shall be used exclusively in the establishment receiving the aid. We would like to note that undertakings are aid recipients, not establishments.

Article 31– Training aid

The current provision in the GBER (Article 31, paragraph 3) is based on the documentation of individual costs for eligible training aid. This creates disproportionate administrative burdens, especially for promotional measures for SMEs with lower training costs. It would be more efficient to grant SME training missions to a specialised provider in line with public procurement rules. The eligible costs could then be defined as those costs calculated as part of the overall mandate granted to the provider so that individual costs would no longer have to be assessed individually. We therefore suggest inserting following sentence:

“e) costs for services entrusted to a provider by a public entity under public procurement rules in the area of training measures in line with paragraphs 1 and 2”

Article 56–Investment aid for local infrastructure

Title and scope

As mentioned under Article 1 only infrastructures with limited investment scope should be considered exempted. We therefore propose to amend the title of Article 56 as follows:

“Investment aid for ~~local~~ infrastructures with limited investment scope”

Moreover for the sake of clarification paragraph 1 of the current Article 56 of the GBER should be amended as follows:

“1. Financing for the construction or upgrade ~~of local infrastructures~~ which concerns infrastructure that contribute at particularly a local level to improving the business and consumer environment ~~and modernising and developing the industrial base~~ shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt 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.”

Procedures for the deduction of operating profits and possibility of lump–sum deduction of operating profits in analogy to Article 53 and 55

The deduction of operating profits is anchored in several parts of the GBER. EAPB finds here many parallels with the rules governing Operations generating net revenue after completion in application of Article 61 of regulation 1303/2013. In the context of the use of ESIF means there is a de–minimis threshold of 1 million EUR for expenditures which are eligible for co–financing. Under this threshold a deduction is not compulsory. The specific procedures are specified in different delegated acts. An application of the two sets of rules is excluded when ESIF means are used as net revenues can only be considered when funding is not State aid related. This notwithstanding both procedures should be designed in a similar manner. EAPB therefore proposes to insert a new paragraph 8 in Article 56 as follows:

“8. When using means from European Structural and Investment Funds and for assessing an investment’s operating profit Article 61 of Regulation No. 1303/2013 may also be applied.”

EAPB further proposes similar amendments to article 55 new paragraph 13 as well to Article 53 with a new paragraph 8(a). Also, the definition of operating profits of the investment should be extended in Article 2 no. 39



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Furthermore, EAPB would welcome the possibility of a deduction of the operating profit of the investment in Article 56 beyond the scope of the use of ESIF means and how it is described in Article 53 and 55. For the sake of simplification this should also be possible in the scope of Article 56. We therefore propose to insert following paragraph:

“6 (a) In the case of aid amounts below 1 million EUR the maximum aid amount in derogation of the method described in paragraph 6 can be set at 80% of the eligible costs”

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%.