

23 September 2019

## EAPB response to targeted review of the General Block Exemption Regulation (State aid): extension to national funds combined with certain Union programmes

Register ID: 8754829960-32

### Background and general comments

The European Association of Public Banks, EAPB, welcomes the possibility to provide feedback on the Draft Commission Regulation amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (GBER) .

As National and Regional Promotional Banks and institutions (NPBIs) EAPB members perform a public mission of fostering economic development and social cohesion. They act based on a public mandate -defined by law- and support their competent authorities' socio-political objectives. They thus often also play a key role in granting State aid. Many will also play an important role as Implementing partners of Invest EU.

We support the Commission's objective to simplify the GBER so that it will be easier to apply in practice for Implementing partners, Financial intermediaries and final beneficiaries under the next programming period. The new exemptions proposed in the GBER amendment are primarily intended to facilitate the combination of national funds with financing from the EU budget (InvestEU). This is to be welcomed. We also expect the new State aid rules to sustain the success of InvestEU.

However, the added value of the new exemption regime for economic and structural policy objectives in the EU could be all the greater if the new rules also applied to other EU funding used for blending purposes, such as Structural funds or also to purely national support programs.

Moreover, the primary focus of attention should be the project impact rather than the distribution channel. The Commission should not impose particular restrictions on NPBIs, compared to other Implementing partners or financial intermediaries when they act on the same economic principles.

## Detailed comments

### Article 2 paragraph 173

We see no objective reason why national promotional banks - as until now - could not use market funds in compliance with the relevant State aid regulations and principles. Indeed, many of EAPB's NPBI members also engage in non-State aid operations, which fulfil the Market Economy Operator Test. It would be therefore erroneous to exclude NPBIs from the scope of Definition of "Market Funds" (Art. 2 § 173) based on the assumption that they are exclusively providing legal State aid. As it appears that this definition has been introduced for the sole purpose of Art. 56. We advocate changing the definition EITHER as follows:

**(173) "market funds" means funds of commercial financial intermediaries and of other market investors, irrespective of their ownership, which operate on a for profit basis and at full own risk, without a public guarantee, or which act on terms of the Market Economy Operator Test and which are independent from the final beneficiaries. This includes funds of business angels, of the EIB Group, of the EBRD and of other multilateral development banks, ~~and exclude as well as~~ funds of national promotional banks or institutions;**

OR as follows:

**„For the purpose of Article 56f [conditions for aid involved in commercially-driven financial products] market funds" means funds of commercial financial intermediaries and of other market investors, irrespective of their ownership, which operate on a for profit basis and at full own risk, without a public guarantee, and which are independent from the final beneficiaries. This includes funds of business angels, of the EIB Group, of the EBRD and of other multilateral development banks, and excludes funds of national promotional banks or institutions;**

2

### Article 2 paragraph 180

The proposed definition of social housing does not reflect the reality in many Member States. Against this background, a single EU wide definition of social housing would not be helpful. We rather suggest listing the characteristics of social housing. Against this background, we propose the following amendment, which we have also proposed in the InvestEU guidelines:

**(180) "social services" means clearly identified services, meeting social needs as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing ~~(which means housing for disadvantaged citizens or socially less advantaged groups who due to solvency constraints are unable to obtain housing at market conditions)~~ and the care and social inclusion of vulnerable groups (as defined in recital 11 of Commission Decision 2012/21/EU);**

#### **180a. Key characteristics of social housing are**

- a) A regionally differentiated financial support/promotion of an object which is dependent on the housing market and the purpose of which is to provide a living space for people**
- b) The people benefiting from social housing do not exceed a certain income threshold (which reflects the different financial and social conditions in the EU)**
- c) The financial support leads to a rent level control and to occupancy commitments (social obligations)**
- d) Compliance with these social obligations is supervised by public authorities.**

### Article 6 paragraph 5

Proof of the incentive effect is already an integral part of the InvestEU regulations. Therefore, it is logical to refrain from proving the incentive effect again within the scope of the aid assessment on the basis of the GBER.

### Article 8 paragraph 3

As we understand it, the reference in Article 8(3)(b) should read as follows:.

**Financing provided to the final beneficiaries under the support of the InvestEU Fund under Section 16 of Chapter III and the cost covered by it shall not be considered for determining compliance with the cumulation provisions of paragraph 3., subparagraph 1. This is achieved by first deducting the nominal**

**amount of the financing supported by the InvestEU Fund from the total eligible project costs and subsequently calculating the highest aid intensity or aid amount applicable to the aid under this Regulation only on the basis of the total remaining eligible costs. The nominal amount of financing provided to the final beneficiaries under the support of the InvestEU Fund shall also not be considered for determining whether the notification threshold under this Regulation is respected.**

Members do not understand the reference to subparagraph 3 so that this should be clarified.

#### Article 56d, paragraph 1

The structure of this paragraph is unclear for us. It the current form members wonder if it could limit the possibility to create national or regional financial products based on guarantee from the Member State compartment which are not offered by the EU compartment and to what extent the GBER can be used for a blending operation which combines the InvestEU guarantee with own Member States resources. In our view in some policy fields blending will be needed in order to successfully implement financial products on the market (i.e. energy efficiency). It should also be clarified that Article 56d (1) a) applies both to „off the shelf” instrument as well as to „tailor made” instruments designed by Implementing Partners.

As far as can be seen, all other provisions in Articles 56d to 56f refer to final beneficiaries or financial intermediaries. We therefore recommend the following wording for this paragraph:

**1. This Section shall apply to aid comprised in *any of the following*:**  
**~~(a) the EU guarantee from the Member State compartment of the InvestEU Fund;~~**  
***(b) or financial products supported by the InvestEU Fund;*****~~(c) aid under points (a) and (b) and passed on to financial intermediaries and final beneficiaries.~~**

3

#### Article 56d, paragraph 4

We do not think the wording is sufficiently precise and therefore propose the following addition:

**4. The maximum thresholds laid down in Articles 56e and 56f shall apply to the total outstanding financing provided to the final beneficiary under any financial product supported by the InvestEU Fund, *per project.***

#### Article 56e, paragraph 1 (a)

We welcome this new approach to determining the State aid value of fixed-rate loans for InvestEU-supported grants. We suggest, however, that the reference interest rates quoted should be made more concrete or that these rates should be defined more precisely, e.g. for the euro mid-swap rates the daily fixing at 11:00 h Brussels time (ICE SWAP), in order to guarantee greater legal certainty here.

#### Article 56e paragraph 1 (b)

We support the possibility of now being able to use loans with variable interest rates at least for InvestEU-supported subsidies that are justified under State aid law. We, however, question the selected reference interest rate EURIBOR. Triggered by Regulation (EU) 2016/1011 - Benchmark Regulation - EURIBOR in its current form is expected to disappear at the end of 2020. We ask the Commission to take this into account in the GBER and to determine an appropriate reference interest rate that will last beyond 2020. This is the only way to ensure the legally secure application of this new regulation. We propose the hybrid EURIBOR.

Members also fear that the proposed pricing conditions cannot be used for the financial instruments that will be implemented within the social investment and skills window. For areas of public intervention under this window (projects without or with low profit - it should be allowed to grant a loan with 0% interest rate.

#### Article 56e paragraph 2 and 6- scope

Members believe that the text should not limit the sectoral coverage of the GBER only to sectors prescribed in par. 3 to 11. It should be correlated with the Investment Guidelines and allow to use the GBER in all sectors listed there.

We would like to note that compared to the areas listed in the Annex 2 of the InvestEU Regulation, within the social investments and skills window, the scope in the GBER amendment proposal is narrower and should be aligned with the InvestEU Regulation.

### **Article 56e paragraph 3,4,7 and 9- level of sectoral thresholds**

While we highly welcome the more favorable conditions proposed for funding under InvestEU, our Members believe that - taking into account the value of future investments in these sectors and the average engagement expected by our members' beneficiaries- the European Commission should consider further increasing the allowed thresholds, together with a proportionate increase of the generally applicable notification thresholds in Article 4 of the GBER. This especially necessary in the area of Aid for research, development, innovation and digitalization, The rapid developments undergoing in the 5 mentioned areas of R&D, innovation and digitization- especially fundamental research, industrial research, experimental development – are driven by complex projects involving such areas as big data, AI, etc.. Given these developments and the importance given by EU policy to these areas it is justified to provide the necessary "safety" margins for future expenditures in this sector.

### **Article 56e paragraph 11 – Consistency with De Minimis Regulation and SME financing thresholds**

We are concerned by the provisions foreseen by this paragraph. Indeed, in the de minimis Regulation, the maximum admissible guarantee amount is defined as 1.500.000 EUR over 3 years. This Article introduces reduced thresholds for operations beyond 5 years and seems to exclude operations with a duration of longer than 10 years. We fail to understand the rationale for such differing thresholds over the duration of the guarantee and for a limitation to 10 years. In addition, the threshold refers to the “nominal amount” of the total financing, which differs from the de minimis Regulation, where the threshold is based on the “underlying loan”. On this issue, for consistency purpose, we would suggest to align with the de minimis Regulation in terms of calculation methodology. Also, any threshold modification resulting from the Fitness Check of the de minimis Regulation should then ideally also be reflected in the GBER. We propose clarifying the Article and increasing the thresholds as follows:

4

#### **11. SMEs, small or innovative mid-caps may receive financing supported by the InvestEU Fund provided that (shall comply with one of the following conditions):**

**(a) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed EUR [30] million and is provided to:**

- (i) microenterprises;**
- (ii) SMEs operating for less than 7 years following their first commercial sale;**
- (iii) SMEs entering a new product or geographical market, where the initial investment for entering into a new product or geographical market must be higher than 50% of the average annual turnover in the preceding 5 years;**
- (iv) innovative SMEs or innovative mid-caps;**
- (v) SMEs or small mid-caps in assisted areas provided that the financing is not used for relocation of activities;**
- (vi) SMEs for cultural purposes and activities set out in Article 53 (2); **or****

**(b) the nominal amount of total financing provided per final beneficiary under the support of the InvestEU Fund does not exceed:**

- (i) EUR 2 million for 5-year loans;**
- (ii) EUR 1 million for 10-year loans;**
- (iii) EUR 3 million for loan guarantees up to 5-years;**
- (iv) EUR 1.5 million for loan guarantees up to 10-years;**
- (v) EUR 400 000 for equity.”.**

\* **The European Association of Public Banks (EAPB)** gathers over 30 member organisations which include promotional banks such as national or regional public development banks and local funding agencies, public financial institutions, associations of public banks and banks with similar interests from 17 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders.