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

European Commission
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EAPB Position on Temporary Crisis and Transition Framework and other State aid simplifications

Dear Madam, Dear Sir,

In the context of the call for ideas from 13 January 2023 of European Commission Vice-President Vestager addressed to EU finance ministers, the EAPB is pleased to share its members' views and ideas on possible simplifications to the EU State aid regime that could contribute to the green and digital transition.
Although their activities have been facilitated by notifications under the Temporary Crisis framework (TCF), for many promotional banks and funding agencies the energy sector remains a challenging area to finance. This broadened scope provided by the TCF is helpful but not enough in relation to green and digital transition. Green transition is especially needed in the area of energy and these investments are large in scale and long in maturity, and not only related to the direct consequences of the Ukraine war but there is a larger need to build a more sustainable energy production and encourage further sustainability in SMEs and municipalities.
Consequently, we urge the Commission to consider more broadly reliefs in relation to funding the energy sector. In many countries public sector owned energy companies play a significant role in production of the energy. Also, structures of these companies vary, some entities have only energy infrastructure in their possession and some entities have infrastructure, production and selling activities in the form of the same company. Without the TCF in many cases, funding possibilities are limited. In case there is a municipal company having all operations under the same company financing is challenging as operations on competitive markets may not be easy to separate from other activities, from a State-aid perspective. We urge the Commission to recognise the important role that public sector energy companies play in investments to green transition. Finance needs for these investments are huge and therefore it is likely that private sector financing may not be sufficient (due to volume and long-maturity needs). Therefore our members should be able to finance public sector energy companies, despite of the form of their operations and in case even operating on competitive markets, with a 100 % guarantee if the financing need is related to green transition.
Moreover, the green and digital transition will not be successful if we do not provide the appropriate support to SMEs in all other sectors affected by the green and digital transition, including in critical raw materials, semiconductors, health, digital and agri-food.
Our members feel there is a need to simplify the definitions of SMEs and undertakings in difficulties as well as to increase de minimis thresholds and to extend block exemptions for energy investments and finance for green companies This also requires a more proportionate application of non-trade distortion State aid criteria which should be extended. Moreover, State aid and/or tax relief measures for the creation of production sites appear to be essential to counter the negative effects of the US Inflation Reduction Act (IRA).
With regard to the specific potential for State aid simplifications and other measures to unlock green investments we would like to propose the points below, which -for many- built on previous comments submitted to the European Commission in the course of the different consultations undertaken and which are thus presented in short form.
Finally, while we welcome the initiative to improve State aid rules to facilitate the use of State aid for the green transition, we believe these measures should be accompanied by additional investment capacities at EU level. In order for all Member States and regions to be able to finance the green and digital transition we need additional EU funding. Therefore, we welcome the announcement of a European Sovereignty fund.

Kind Regards,

EAPB

Simplifications possibilities:

1. Adaptation of the SME definition:

- Adaptation of the definition "linked undertakings" to the definition "a single undertaking" of the de minimis Regulation.
- Deletion of the regulations on partner undertakings

2. Adaptation of the definition of undertakings in difficulties:

- Consideration of positive developments within the last 12 months (already included in the previous definition) and
- The exclusive application of the insolvency criterion in the UID definition (deletion of the capital consumption criterion).
- For the financing of start-ups and deeptech which are key for the energy and digital transition:
    - Review the start-up regime and the current UiD exemptions by raising the age limit of companies from 5 to 7 years (as for risk financing) and by doubling the ceilings
    - Alternatively: ask for an UiD exemption for start-ups (see definition of start-ups) under the i) start-up, ii) RDI, ii) SME regimes with the 5 year and 7 year limit for deeptech

  Review the definition of equity to include quasi-equity

3. De minimis Regulations:

- Increase of the general de minimis threshold to EUR 500,000 and the SGEI de minimis threshold to EUR 800,000.

- Abolition of cumulation rules for de minimis aid with other aid for the same eligible costs.

- Agricultural de minimis: The contradictory situation still prevails that the current agricultural de minimis framework limits the possibility for agricultural enterprises to utilize the increased under TCF 2.1. The Commission has already launched a review of the de minimis Regulation but we would like to stress that it would be advisable to speed up the review and, as a result, to also increase the agricultural de minimis thresholds.

4. Publication obligation for all aid only from EUR 500,000 in all types of aid.

5. GBER

- ***Environmental aid under the GBER***
  Our members are in favour of a waiver of net additional costs for projects with a "green share" of at least 20% and an increase of aid intensities in Article 17. Furthermore there should be an increase of aid intensities for projects that fulfil the ESG criteria according to the EU Taxonomy. In general Section 7 of the GBER should be drastically simplified to avoid penalising the transition efforts of EU companies and the thresholds raised to avoid relocation to third countries. Simplifications could also be provided with rules mirroring the RDI guidelines for SMEs.
- ***Extension of GBER's regional investment aid to investments in the energy/power generation, distribution and energy/power infrastructure sectors.***
  Under Article 13 of the GBER, regional aid cannot not be granted for energy generation, distribution and infrastructure sectors, and it is why we propose to lift the ban, even if for only a limited period, for example until 2025, which would allow higher aid intensities, while at the same time raising the notification threshold for projects, thus benefiting companies wishing to carry out large energy efficiency investments, which could continue to operate while maintaining or even increasing their competitiveness.
- ***New digitalization legal basis in the GBER:***
  Digitalization is a top priority in the new EU objectives for the programming period 21-27, but this is not reflected in the GBER which currently allows the funding of digitalization-related

developments only in a very limited scope and only in relation to other areas, and therefore we see these activities being funded mainly under the general de minimis aid, thus further burdening the already limited individual de minimis thresholds of enterprises. In our opinion, it would be worthwhile to develop new legal basis for the support of digitalization objectives

- **Extension of Article 38 of GBER to investments aiming at achieving (energy) standards**: under Article 38 of the GBER only investments aiming at achieving beyond existing/coming standards are eligible. In our view, these are excessive expectations. In the wording of the August 2022 version of the GBER amendment we have seen that the title is intended to support investments that exceed the standard and **that the investment must be completed 18 months before the standard enters into force. This seems extremely complicated**- both for the control and for the investors to schedule/implement the investment depending on the entry into force of future standards.

6. Demarcation from non-aid-relevant financing in the framework of the Risk Capital Communication:

- Application of the Market Economy Operator Test (MEOT) already at 20% private financing
- No restriction to independent investors

7. Reference interest rate communication: equal treatment of project, real estate and foundation ratings with balance sheet-based rating

8. Consideration of subordinated loans as transparent forms of aid and thus use of the reference rate communication without the need for notification to determine the gross grant equivalent.

9. Publication of a Temporary Framework for Green Investments and Green Enterprises:

- Duration until 2030. It should be noted that the US Inflation Reduction Act foresees aid for up to 10 years.
- Instruments:
  i. Small grants up to EUR 2 million
  ii. Low-interest loans with a term of up to 10 years
  iii. Equity investments
  iv. Hybrid financial instruments, such as subordinated loans.
- Deletion or simplification of the rules on cumulation of the same eligible expenses.
- Promotional banks and Municipal funding agencies should be able to finance public sector energy companies, despite of the form of their operations and in case even operating on competitive markets, with a 100 % guarantee if the financing need is related to green transition.

10. Measures to support investments for sustainable recovery under the COVID Temporary Framework for State Aid in force until 31 December 2023

- Extend the scheme until at least December 2025
- Simplify the conditions of implementation: the conditions (environmental/carbon footprint reduction, transformation/digitalisation) are complex and create uncertainty for our beneficiaries as to whether the aid has actually been acquired. There is a sub-optimal use of this scheme as it is not convincing in contractual terms.

11. SGEI Decision: No review every 3 years, but one-time determination of the amount of aid in the context of the approval on the basis of a plausible prognosis (analogous to the regulations of the GBER for infrastructure funding, e.g. Art. 53, 55, 56).

12. in the case of ESG-linked loans: application of the MEOT also if only the promotional bank grants a differentiated interest rate

13. extension of the application of the criterion of non-trade distortion (projects of local significance only so far):

- The main recent Commission Decisions on non-trade distortions only apply to certain sectors such as care facilities – need for an extension to all economic sectors such as local businesses and craft enterprises.
- Creation of a rule according to which subsidies for micro-enterprises cannot affect trade.