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EAPB comments on the proposed draft for a new General Block Exemption Regulation (GBER)- HT. 6365

General remarks

National and regional promotional banks implement targeted support measures on behalf of their owners. To this end, national, regional and often also European funding resources are used. European State aid rules are of essential importance in this context. While the draft revision of the General Block Exemption Regulation (GBER) contains welcome simplifications for practical application, important elements remain unclear or difficult to operationalise in practice. From the perspective of granting authorities, including national and regional promotional banks, the decisive criterion is not only legal correctness but also the ability to apply the rules in a consistent, predictable and verifiable manner. In several areas, the draft does not yet sufficiently meet this requirement.

The Commission's stated objective is that the new GBER should reduce administrative burden and be easier to interpret and apply. In our view, this has only been partially achieved. In many areas, very useful simplifications have been introduced. These include, for example, the general use of simplified cost options or higher maximum aid intensities for limited aid amounts. However, many of the new provisions are difficult to understand without further clarification or appear partly contradictory.

In addition, the draft continues to contain numerous references to additional criteria from other EU regulations or directives. As a result, when granting certain types of aid, it is necessary not only to assess compliance with State aid rules under the GBER, but also, for example, environmental protection provisions, classification criteria for energy sources under other EU legal acts, or Union rules for centrally managed funds. For legally sound application, this requires not only State aid expertise within granting authorities, but also environmental expertise and, in some cases, in-depth economic knowledge.

Due to this complexity, the administrative burden for both beneficiaries and granting authorities increases significantly. Smaller-scale support measures thus risk having an unfavourable cost-benefit ratio.

Also, certain requirements regarding the implementation of financial instruments contradict the nature of entrusted entities- very often national and regional promotional banks, e.g. mandatory competitive selection. The new GBER introduces significant limitations to the current model of implementing a wide range of financial instruments. This raises concerns as to the very concept of directly entrusting national promotional banks with the implementation of financial instruments e.g. under RRF or Cohesion Policy, which by definition is not aimed solely at profit maximization but, on the contrary, is intended to support projects pursuing regional-policy objectives. These objectives constitute an integral part of the public mandate of NPBI's and have so far been implemented in line with well-established principles and

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practices of Cohesion Policy. The proposed changes preclude the possibility of establishing stable, long-term GBER based support mechanisms, including mechanisms extending beyond a single programming period. Further details and practical implications of this issue are addressed in the detailed section below.

In this context we would also like to highlight the importance of equal state aid playing rules for the EIB Group and the NPBIs.

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Detailed comments

Article 1 – Subject matter and scope

Article 1(2)(a):

We welcome the proposed extension of the GBER to the sectors of primary agricultural production and primary production of fishery and aquaculture products. However, the provision also contains exceptions to exceptions, which are difficult to understand and entail interpretative risks (e.g. Article 1(2)(c)(v)). This should generally be avoided.

Furthermore, conditions should not be separated by semicolons, as this punctuation mark has different meanings across languages. It is therefore unclear whether it implies “and” or “or.” It would be preferable to specify explicitly whether “one of the following criteria” or “all of the following criteria” must be fulfilled.

Article 1(5)(a)–(d):

With regard to the exclusion of undertakings in difficulty (UID), now addressed in Article 2(32) and Article 1(5), certain categories of aid are now intended to be exempted from this exclusion.

Exceptions to individual criteria within the UID definition should not be placed in the scope provision under point (a), but directly within the definition itself. Otherwise, compared to the current regulation, SMEs in their first three years could be classified as undertakings in difficulty if they meet the capital loss criteria under Article 2(32)(a) and (b). This would have significant implications for many aid schemes.

We also advocate increasing the age threshold for SMEs from three to at least five years.

Article-specific exceptions for UID eligibility should be included directly in the respective articles.

See amendment proposals in Annex

Article 1(5)(g):

Point (g) mixes scope provisions with definitional restrictions, increasing complexity. We propose deleting the additional conditions “not listed on a stock exchange and operating for less than ten years.”

Article 1(2a) (current version):

We explicitly welcome the removal of the obligation to prepare evaluation plans where certain thresholds of average annual budgets are exceeded. This requirement is no longer appropriate.

Article 2 – Definitions

General comment:

Definitions are structured according to where they first appear in specific chapters. This is impractical, as it would require checking applicability before applying a definition. Different

definitions should not apply depending on the chapter. Therefore, such restrictions should be removed.

Article 2(3):

The definition of “undertaking” reflects functional State aid principles. However, combined with Article 3(2)(b), which makes the undertaking decisive for assessing compatibility, this may significantly complicate application. The term “undertaking” appears more than 600 times in the draft.

Assessing groups of undertakings could be particularly problematic for the UID definition, as criteria such as capital loss or insolvency relate to legal entities and financial statements. Where no consolidated accounts exist, this would require auxiliary calculations and complex assessments, making simple application impossible.

This would also affect public bodies and their subsidiaries, as entire groups would need to be assessed.

Article 2(4):

The introduction of a definition for operating aid is welcomed.

Article 2(18) and (20):

The definitions of marketing and processing of agricultural products exclude certain activities (e.g. first sale by the primary producer) without assigning them elsewhere, creating a definitional gap. This should be addressed by including these activities in the definition of primary agricultural production.

Article 2(32):

The definition of undertakings in difficulty should be simplified. Mezzanine capital should be recognized as equity. For SMEs, UID status should only arise where insolvency criteria under national law are met.

Article 2(34): Definition of “start-up”

In Article 2(34), the definition of “start-up” is expressly marked as “[definition to be determined]”. At the same time, Article 29(5) links substantial legal consequences to this term – in particular the doubling of all maximum aid amounts. For loans, this translates to amounts of up to EUR 4.4 million (in assisted areas), for guarantees up to EUR 6.6 million – a significant advantage over “young undertakings” (which qualify for the doubling only as social enterprises). It is therefore essential that the definition contain clear, verifiable criteria – in particular regarding the date of establishment, degree of innovation, or growth potential – that allow granting authorities to distinguish start-ups from the general category of “young undertakings” during the application assessment process. Criteria such as “innovative”, “scalable” or “growth potential” would be unsuitable: they are neither objectively measurable nor ascertainable by granting authorities without burdensome case-by-case examination and would lead to considerable legal uncertainty across Member States. Given the significance of

these financial thresholds, a renewed consultation after inclusion of the definition would be warranted.

Article 2(38):

A definition of “equipment” would be useful.

Article 2(42):

Simplified cost options should explicitly be recognized as methods providing the best possible approximation of eligible costs.

Article 2(48):

The inclusion of a terminal value in financing gap calculations should only apply where the reference period is shorter than the project’s lifetime. Otherwise, no residual value should exist. The reference to terminal value should therefore be deleted.

In addition, the “appropriate discount rate” remains insufficiently defined. In order to ensure consistent application across Member States, it would be desirable to clarify acceptable methodologies, such as the use of reference rates or weighted average cost of capital (WACC), where appropriate. This would reduce the risk of divergent assessments and enhance legal certainty.

A uniform methodological framework would facilitate consistent application across Member States, especially for long-term projects such as hydrogen infrastructure.

Article 2(79):

All forms of risk finance, including tax incentives, should be covered.

Article 2(81)- Private investor definition

Funds provided by the European Investment Bank or European Investment Fund should count toward private co-investment and be reflected in the definition of private investors. This should apply to all financing forms.

Also, the draft GBER excludes national promotional banks from the definition of “private investor”, which in practice prevents their financing from counting towards the minimum level of private co-investment required under measures such as risk-finance aid or Article 17 (Regional urban development aid). The current definition treats institutional status as the basis for exclusion, regardless of the actual financing conditions. This approach is not in line with the reality: national promotional banks frequently operate on market terms and bear full investment risk, applying commercial rates of return just like private investors.

Excluding national promotional banks solely on the basis of their legal status is therefore unjustified and contradicts the logic of assessing the market-conform nature of transactions and the actual risk borne. In our view, whether a given entity acts as a private investor should be assessed exclusively on the basis of the financing conditions—market-level pricing, risk structure, and the absence of preferential treatment—and not on the fact that the entity holds the status of a national or regional promotional bank.

We therefore propose that national and regional promotional banks be treated as private investors whenever they operate as such.

Article 2(89):

The existing definition of “innovative enterprise” should be retained.

Article 2(104) and Article 41: Digitalisation and cybersecurity

We welcome the direction taken regarding digitalisation and cybersecurity, in particular the introduction of Article 41 on innovation aid for SMEs and small mid-caps. The introduction of a definition of digitalisation is welcome. However, digitalisation should also be included as a general category (e.g. Article 32), not limited to Article 41. The proposed scope of the draft GBER still does not meet the real needs of full digital transformation and strengthened cybersecurity in the economy.

Digitalisation and cybersecurity appear only marginally in selected articles—such as Article 41, Article 64, Article 66 (smart grids as ICT/OT elements), Article 53 (secure communication in charging/refuelling infrastructure), and Article 79 (cybersecurity airport infrastructure)—which is insufficient given the expected development priorities for the coming years. In practice, this means that State aid cannot be provided for projects which EU policy indicates should be promoted.

As a result, the new GBER will still not allow State aid for comprehensive digital projects in the public sector (e.g. hospitals, universities, municipal companies) or for enterprises outside the SME category. There is no aid category covering deep digital transformation or cybersecurity implementation in a technologically neutral way—including service costs, cloud solutions, ICT/OT security infrastructure and software. We recommend exploring a new aid category or expanding the proposed Article 41 to allow financing digital and cybersecurity projects in line with EU priorities, including in the public sector and large enterprises.

Where non-repayable support is regarded as too distortive for large enterprises, support may be limited to repayable forms such as loans.

Article 2(144):

Unlike SGEI rules, the GBER lacks a methodology for defining reasonable profit.

Article 3 – Compatibility conditions

Article 3(2)(a):

The 10-year durability requirement for infrastructure aid is welcome, but unclear due to the broad use of the term “infrastructure.” It should be limited, e.g. to investment aid under Chapter III, Section 9. We consider that the 10-year period should begin from the date the aid is granted. The final payment date seems to us to be arbitrary and will only lead to further red tape.

Article 3(2)(b):

It is positive that responsibility for compliance lies clearly with the undertaking.

Article 3(2)(c):

Requiring competitive, transparent and non-discriminatory conditions for third-party involvement raises concerns for construction and modernization, as it overlaps with public procurement rules. These should be excluded from this provision.

Article 4 – Financial instruments

This provision is welcomed as a general framework for financial instruments. However, a definition of "financial instrument" is needed.

Moreover, the provisions do not adequately reflect the roles of entrusted entities, intermediaries, and final beneficiaries. In particular, it should be clarified that the role of entrusted entities can cover both direct and indirect implementation, provided that State aid is effectively passed on to final beneficiaries and compliance with State aid rules is ensured at the relevant level. Entrusted entities should be regarded as intermediaries to be able to provide direct and indirect financing but the current wording makes this interpretation ambiguous. Certain requirements contradict the nature of entrusted entities, e.g. mandatory competitive selection. The requirement for profit-oriented decisions limits the purpose of State aid (addressing market failures). The draft Article 4 of the new GBER introduces significant limitations to the current model of implementing a wide range of financial instruments.

Article 4 (5)

If this clause aims to regulate combination in one operation there is one significant part missing from the regulation i.e. the implementation by the entrusted entity without involving intermediaries. Since under the current regime direct implementation by the entrusted entities are common, such option should also be included here**.**

Article 4(6)

As above, the question is, whether it is also applicable to direct implementation by entrusted entities. We recommend adding that *"Aid granted directly by entrusted entities shall be passed on entirely to the final beneficiaries,* unless the intermediary retains an advantage that would itself need to be assessed under Article 107(1) TFEU*."*

Article 4(7)

There are very serious concerns regarding the requirement to apply all conditions arising from paragraph 7 to an entrusted entity acting as a financial intermediary under the GBER. In particular, the obligation in paragraph 7(a) for a Member State to conduct an open, transparent and non-discriminatory selection procedure is problematic. This approach is internally inconsistent, as the entrusting tasks, especially to national and regional promotional banks, under Cohesion Policy or the Recovery and Resilience Facility is based on direct appointment, often grounded in national legislation, rather than selection through competitive procedures. Requiring entrusted entities to compete in such procedures contradicts their statutory role and undermines long-established practices for implementing financial instruments. The requirement for an open, transparent and non-discriminatory selection procedure should not apply where entrusted entities are directly mandated by Member States in accordance with

Union or national law, provided that the selection of such entities is justified and does not result in undue advantages.

In addition, the new GBER is to apply from 1 January 2027, i.e. in the middle of the current financial period. This means that national promotional banks which were directly appointed as entrusted entities in line with the CPR and which will act as financial intermediaries will no longer be able to grant State aid under the GBER as from 1 January 2027.

➔ **It is necessary to delete from paragraph 7 the wording: "*including an entrusted entity also acting as intermediary*".**

Article 4(7)(b)

The obligation that every financial instrument "*shall be managed on a commercial basis and shall ensure profit-driven financing decisions*" should be interpreted in line with the objective of addressing market failures. In this context, a distinction should be made between: (i) the absence of an economic advantage at the level of intermediaries (assessment of State aid existence under Article 107(1) TFEU), and (ii) the compatibility of aid granted to final beneficiaries under the GBER. A strict profit-maximisation requirement is not appropriate for projects implemented by the public sector, the non-profit sector (including social economy entities), regional policy instruments, or support for training and persons with disabilities. In many cases, repayments come from sources other than revenues generated by the project itself. Entrusted entities are mostly national and regional promotional banks and institutions providing financing under cost of equity in market failure cases. Their operation is not driven by profit maximalization, which is contrary to the approach of the European Commission to public banks. In the Communication on National Promotional Banks, the Commission noted: "*NPBs prove to work best where they focus on economically viable projects and operate with sufficient profitability (albeit below private operators' cost of equity) to maintain financial soundness without continued capital injections by the government (profits mostly being retained to bolster future lending capacity).*"

Article 4(7)(d) regulatory supervision (if applied to entrusted entities)

If any Member State appoints an agency to provide financial instruments, this condition will obviously not be met. We suggest this clause to be removed or modified accordingly.

Article 4(7)(e) relevant expertise

This condition should be deleted. The expression of 'relevant experience' is too vague, it will raise numerous questions during audits, will cause uncertainty that will further slow the launch of financial instruments. Furthermore, financial instruments should target new markets and market failures meaning that there can be cases (products) where no previous experience exists therefore no experience can be realistically requested. This provision could therefore be counterproductive to the purpose of certain financial instruments, which is specifically to create or develop a market in the absence of activity by market players.

Article 4(9)

Equating loans with grants for notification-threshold purposes—by linking the limits to the nominal value of the loan rather than to the gross grant equivalent—is entirely unjustified. As a result, large loans with very low aid intensity (e.g. arising solely from a 0.5-percentage-point

interest-rate reduction) are treated in the same way as instruments that provide a genuinely high level of support. Grants and repayable instruments must not be treated as equivalent, because their economic nature and their impact on the market are fundamentally different.

We propose:

- Clarifying that aid is passed on to final beneficiaries (e.g. paragraph 4 is unclear about this, entrusted entities should be able to provide direct financing) the pass-through of aid to final beneficiaries: the GBER must specify (i) the moment at which aid is deemed to be granted to the final beneficiary, (ii) how compliance with applicable aid intensities and maximum amounts is verified at the level of the final beneficiary, and (iii) that entrusted entities implementing financial instruments directly are treated as passing through aid to final beneficiaries without the interposition of a further intermediary
- Removing the above mentioned requirements for entrusted entities,
- Allowing flexibility in profit orientation in agreement with Member States.

See amendment proposals in Annex

Article 6 – Aid amount

The wording could be simplified. Subordinated loans should be explicitly included as standard instruments not requiring complex assessment.

Article 7 – Aid intensity and eligible costs

Simplified cost options should also apply to purely national measures and reflect all EU fund options.

The requirement of documentary supporting evidence is counterproductive. Financial instruments should be able to provide funding with performance-based and not documentary evidence criteria.

Furthermore, Article 7(2)(b) is formulated ambiguously. The phrase “or, alternatively […]” does not clearly refer to the entire first part of Article 7(2)(b) but only to the phrase “that allows the use of simplified cost options”. It also remains entirely unclear what is meant by “appropriate authority” – whether this refers to the programme manager, the granting authority, or an audit unit. In our view, it is entirely sufficient if the conditions for the admissibility of simplified cost options are limited to Article 7(2)(a). We therefore propose deleting Article 7(2)(b).

Article 9 – Cumulation

The rules are overly complex. A simpler rule should apply: total funding must not exceed the applicable maximum aid intensity and the eligible costs. It is not clear how performance-based and cost-based aid can be cumulated with each other.

De minimis provisions are inconsistent and should be removed.

See amendment proposals in Annex

Article 10 – Transparency

Raising the publication threshold to EUR 500,000 would significantly reduce administrative burden.

Chapter III (selected highlights)

Article 20 – Investment aid for SMEs:

The introduction of a 100% aid intensity threshold up to EUR 300,000 creates discontinuities. A more gradual approach is preferable.

The exclusion of replacement and modernization investments creates practical difficulties and should be removed. Eligible investments should instead follow accounting capitalization principles. The complete exclusion of replacement and rationalization investments is also not persuasive from a teleological perspective: Article 20 specifically aims to support SMEs for operational investments, and SMEs structurally face a backlog in renewing outdated equipment. Replacement investments should therefore be eligible, at least in part. Additionally, by analogy with the simplifications introduced in Article 15(6), the rules on real-estate leasing in Article 20(6)(a) should be deleted, as the same starting situation applies in both cases. Furthermore, Article 20 should also be extended to small mid-cap companies, which regularly face the same challenges as SMEs.

Article 25 & 27 – Risk finance:

The requirement to use intermediaries creates unnecessary burdens. Entrusted entities should be allowed to act directly where appropriate. Entrusted entities should be allowed to act directly where appropriate. More specifically, Article 25(2) introduces a materially new restriction compared to the current GBER by providing that “neither Member States nor entrusted entities may invest directly in eligible undertakings without the involvement of a financial intermediary.” Promotional banks acting as entrusted entities within the meaning of Article 2(88) of the draft — a term which expressly includes promotional banks — would thereby be required to involve a financial intermediary even where they are technically and organisationally capable of implementing the transaction independently. This represents a significant interference with established practice. Article 25(2) should therefore clarify that entrusted entities to which a Member State has delegated the implementation of risk finance measures, and which themselves satisfy the requirements for financial intermediaries under Article 25(16) and (17), may act as financial intermediaries within the meaning of that article without the need to involve an additional intermediary. Alternatively, paragraph 2 could be supplemented by a sentence to the effect that: “An entrusted entity to which a Member State has delegated the implementation of the measure shall be deemed to be a financial intermediary within the meaning of this article, provided that it satisfies the requirements of paragraphs 15 to 17 and acts within the framework of a corresponding mandate.” Regarding Article 27: the instrument spectrum under Article 27(5) should be extended to include equity-like instruments (with a reference to the fresh capital requirement in Article 25(7)), and the flat 30% minimum private co-investment rate in Article 27(7) should be replaced by a reference to the phase-dependent tiering in Article 25(11) and (13).

Article 28:

The scope is unclear and requires clarification.

Article 32:

Digitalisation should be explicitly integrated.

Article 38 – Investment aid for research and testing infrastructures

The merging of the previously separate provisions (formerly Articles 26 and 26a) and the harmonisation of the aid intensity at 50% are welcome. However, we propose retaining the current notification threshold of EUR 35 million per infrastructure in Article 38(2), given that investments in such infrastructures regularly entail very high costs. Furthermore, the safe harbour rule — allowing a maximum aid intensity of 80% of costs for aid amounts below EUR 2.2 million, which has already been introduced in many infrastructure-related articles — should also be made applicable to projects under Article 38.

Article 39 – Aid for innovation clusters

The possibility under Article 39(8) of a one-time extension of operating aid for a cluster by a further ten years is welcome. However, this should be accompanied by a commensurate increase in the threshold to EUR 20 million — a doubling of the current EUR 10 million — rather than the EUR 15 million proposed in the draft, in order to account for price increases in recent years.

Article 44:

Training aid rules should allow outsourcing and direct payments to providers.

Articles 51, 52, 55, 65:

Aid intensity structures are overly complex and should be simplified.

Counter-factual scenarios are difficult to apply to capacity increasing investment projects as they are inapplicable for practical reasons and there is no guidance whatsoever on the potential application and SMEs does not have the resources to put such effort into a project preparation. The option to avoid counterfactual analysis in exchange for reduced aid intensity should be introduced.

With regard to Article 52, the connection to the electricity distribution network should be included in the eligible costs as well as direct costs related to the refill station (planning, parking lots, signs, concrete works etc.), direct costs for the operation of the refill station (supplementary facilities, service buildings like toilets, and related infrastructure e.g. drainage systems) and reverse current protection. This form of aid should be competitive with other directly EU-funded projects, like CEF that are less strict now.

Thresholds should be increased by 50% to reflect economic developments.

Article 56 - Investment aid for energy performance measures in buildings

Article 56(3)

We consider the cap of 30 million euros on the amount of a loan, as set out in the second sentence, to be too low, as there may well be construction project subsidies involving higher amounts of promotional loans. We propose 50 million euros here.

Article 56(9)

Under this provision, (subsidised) loan financing for energy efficiency measures in social or affordable housing is unlikely to lead to any rent increase. Although we understand the social rationale behind this, it fails to take economic reality into account. Landlords must repay the loans and would need to generate income to do so, yet they would not even be permitted to increase the rent moderately. They therefore bear the costs alone, whilst the tenant benefits. This creates no incentive to invest. We advocate for the possibility of a moderate rent increase within the framework of the existing relevant national legal regulations.

Article 56 (11) and (12)

In the description of the methods for calculating aid intensity, the calculation based on a simplified funding gap is missing, provided that the aid is not granted through a financial instrument. Furthermore, it is unclear why Article 4 establishes general rules for financial instruments through which the aid measures listed in Chapter III may be granted, yet makes no reference to these rules in the context of building-related energy efficiency measures; instead, paragraph 12(a) effectively excludes such measures through specific provisions for an energy efficiency fund. Furthermore, the description of the roles and their tasks does not align with previous experience in the implementation of financing instruments. For example, a financial intermediary establishes a fund. This is considered to be very restrictive.

See amendment proposals in Annex

Article 73 – Investment aid for local infrastructures

The simplifications and the introduction of the safe harbour rule in Article 73(6)(b) are welcome. However, there remains scope for improvement: in our view, the notification threshold of EUR 11 million in aid (or total costs of EUR 22 million) for the same infrastructure is too low. A significant increase in the notification threshold is necessary in order to achieve meaningful relief and a broader scope of application.

Article 79 – Aid for airports

We explicitly object to the rule in Article 79(7) regarding the distance and travel time between individual airports as an exclusion criterion. We advocate retaining the current threshold of 100 km or 60 minutes. The draft increases the exclusion criterion from the current 100 km to 150–200 km, and extends the relevant travel time from the current minimum of 60 minutes to “more than 90–120 minutes”. This tightening is not appropriate: the aim of the GBER revision should include clearer and more flexibly designed rules for airport aid. The proposed blanket increase of the distance and travel time thresholds is inconsistent with that aim and would deny several regional airports – with comparatively low passenger numbers by national and

international standards – access to block-exempted aid. The revision considerably widens the radius within which no further airports with scheduled services may exist. Moreover, it is not apparent on the basis of which criteria the new distances were determined, nor why there is a need to enlarge the existing radius, particularly given that the airport landscape appears consolidated and the emergence of "ghost airports" or new unviable regional airports is not to be expected. The blanket increase also disregards the fact that the new rules exclude existing airports whose support was possible under the previous conditions and whose maintenance continues to be considered necessary from an economic policy perspective.

Transitional provisions

Given the fundamental nature of the GBER revision and the resulting large number of national aid schemes that will need to be adapted, the adaptation period currently provided for in Article 58(4) GBER should be extended from 6 months to 12 months. Furthermore, a transitional provision analogous to the current Article 58(5) GBER should be included in the draft, ensuring that in the event of a further amendment to the GBER before the expiry of its validity period, sufficient time (customarily 6 months) remains available to adapt existing aid schemes.

GBER Annex I – SME Definition

The definition of linked undertakings in the SME definition should be amended.

- **Alignment of the definition of linked undertakings with the de minimis definition of 'a single undertaking'**

The current SME definition of linked undertakings also covers links via natural persons operating in the same relevant market or in an upstream or downstream market. The de minimis Regulation (EU) 2023/2831, by contrast, bases its definition of 'a single undertaking' (Article 2(2)) solely on links relating to capital or voting rights and omits the element of the natural person. In practice, this divergence leads to a systematic divergence between an undertaking's SME status and its de minimis eligibility. For granting authorities and aid recipients, this creates the paradoxical situation where an undertaking is classified as a large undertaking under the AGVO, even though it is regarded as an independent undertaking for de minimis purposes. This inconsistency is neither justifiable from a legal-systematic perspective nor communicable in administrative practice.

Against this background, the definition of linked undertakings in Annex I, Article 3(3) should be aligned with the definition of 'single undertaking' in Article 2(2) of Regulation (EU) 2023/2831.Specifically, the requirement that a natural person act as the connecting link should be removed.

Affiliated undertakings should be defined solely on the basis of majority shareholdings or voting rights. This will ensure consistency across state aid instruments and relieve both granting authorities and applicants of the burden of conducting divergent group assessments.

- **No inclusion of partner enterprises in the SME definition**

Furthermore, we also advocate simplifying the group assessment in the SME definition by dispensing with the partner enterprise construct. The 'partner undertaking' concept enshrined in Article 3(2) of Annex I requires the pro rata aggregation of data from all undertakings in

which the applicant undertaking holds between 25% and 50% of the voting rights or capital – and vice versa. This assessment ties up considerable administrative resources without addressing an actual risk of circumvention in all scenarios. The affiliated company test is particularly disproportionate in cases where the companies involved demonstrably operate in completely separate markets, do not share common management structures and do not exchange resources with one another. In these scenarios, the economic unity that the SME definition is intended to protect is precisely not present.

- **Updating the thresholds and simplifying the group audit**

The current thresholds for the SME definition (250 employees, EUR 50 million in turnover or EUR 43 million in total assets) are based on Commission Recommendation 2003/361/EC and have not been substantially adjusted since then, despite significant economic changes. We advocate an adjustment of 50%.

OTHER

Social-economy entities

The draft GBER lacks an aid category allowing State aid for social-economy entities—organisations whose primary purpose is not profit maximisation, but the pursuit of social objectives (e.g. local community services, social and professional reintegration, job creation for disadvantaged groups, provision of social services). Under the GBER, such entities are currently treated identically to profit-maximising businesses. Due to the specific nature of their operations and associated costs (often operational rather than capital expenditure), the only available form of State aid is de minimis, which is insufficient given its low ceiling.

There is a clear need for solutions for social-economy entities based on risk-finance support mechanisms but adapted to the characteristics of these entities—i.e. emphasising social objectives rather than profit maximisation.

Dual-use technologies/defence

The draft GBER does not provide real possibilities for supporting dual-use technology projects, despite the fact that both EU and national policies increasingly emphasise the need to develop such technologies. The current provisions concerning support for projects previously selected under the European Defence Fund or the European Defence Industrial Development Programme cover only strictly military initiatives and exclude the broad range of civil-defence technologies essential for economic resilience and EU security. At the same time, dual-use technologies are actively promoted under the RRF.

The GBER does not include any aid category enabling support for dual-use technologies—even when the primary application is civilian (e.g. critical infrastructure, robotics, sensors, autonomous systems, data processing, cybersecurity, communications systems, space technologies). We recommend expanding the catalogue of aid categories or creating a new one so that the GBER aligns with strategic EU policy directions and enables support for dual-use technologies on equal footing with other key priorities.

Where non-repayable support is considered too distortive in this area, support may be limited to repayable forms, such as loans**.**

Annex: EAPB Amendment suggestions

Legal reference Draft Commission Regulation for the General Block Exemption Regulation (GBER) **Article 1 – paragraph 5**	
Current text in the draft Commission Regulation	**Proposed Amendment**
5. This Regulation shall not apply to aid to undertakings in difficulty. However, it shall apply to the following categories of aid, if the undertakings in difficulty are not treated more favourably than other undertakings: (a) aid to SMEs in existence for less than three years, if they qualify as undertakings in difficulty under Article 2, point (32)(a) or (b); …	5. This Regulation shall not apply to aid to undertakings in difficulty. However, it shall apply to the following categories of aid, if the undertakings in difficulty are not treated more favourably than other undertakings: ~~(a) aid to SMEs in existence for less than three years, if they qualify as undertakings in difficulty under Article 2, point (32)(a) or (b);~~ …
Justification Paragraph 5 sets out criteria for determining when undertakings in difficulty (UID) fall within the scope of the Regulation. In the currently applicable Regulation, some such exceptions to the exceptions are treated as an exception at the level of the definition of an enterprise in difficulty, specifically with regard to the capital loss criteria. This new structure means that, for example, SMEs that have been in existence for less than three years are to be classified as uid under the proposed rules and may nevertheless fall within the scope of the AGVO. This is viewed critically. Furthermore, the authorities responsible for aid schemes should be made aware that a general exclusion from aid for UID is more far-reaching than before. Therefore, at least the provision in Article 1paragraph 5 point (a) should be reintroduced into the definition, or a provision should be made whereby, in the cases referred to in paragraph 5, the undertakings are not considered to be in difficulty. The proposal for the definition of UID is set out in the comments on Article 2. Based on further comments regarding the definition of UID, a different proposal for an amendment has been put forward (see section 2(b) of this opinion)	

Legal reference Draft Commission Regulation for the General Block Exemption Regulation (GBER) **Article 2 – paragraph 1**	
Current text in the draft Commission Regulation	**Proposed Amendment**
(32) 'undertaking in difficulty' means an undertaking in respect of which at least one of the following circumstances occurs: (a) In the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the equity of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in	(32) 'undertaking in difficulty' means an undertaking in respect of which at least one of the following circumstances occurs: (a) **In the case of an undertaking that is not an SME** i) In the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part

particular to the types of company mentioned in Annex I to Directive 2013/34/EU of the European Parliament and of the Council14 and 'share capital' includes, where relevant, any share premium.	of the equity of the company **including mezzanine capital as economic equity)** leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I to Directive 2013/34/EU of the European Parliament and of the Council14 and 'share capital' includes, where relevant, any share premium.
(b) In the case of a company where at least some of its members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some of its members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II to Directive 2013/34/EU.	~~(b)~~**ii)** In the case of a company where at least some of its members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some of its members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II to Directive 2013/34/EU.
(c) Where the undertaking is subject to collective insolvency proceedings or meets the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.	**iii) where, for the past two years:** **- the undertaking's book debt to equity ratio has been greater than 7.5 and** **- the undertaking's earnings before interest, taxes, depreciation, and amortisation (EBITDA) interest coverage ratio has been below 1.**
(d) In the case of an undertaking that is not an SME, where, for the past two years: (i) the undertaking's book debt to equity ratio has been greater than 7.5 and (ii) the undertaking's earnings before interest, taxes, depreciation, and amortisation (EBITDA) interest coverage ratio has been below 1.	(~~c~~b) Where the undertaking is subject to collective insolvency proceedings or meets the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
(e) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.	(d) ~~**In the case of an undertaking that is not an SME, where, for the past two years:**~~ ~~**(i) the undertaking's book debt to equity ratio has been greater than 7.5 and**~~ ~~**(ii) the undertaking's earnings before interest, taxes, depreciation, and amortisation (EBITDA) interest coverage ratio has been below 1.**~~ (c) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.

Justification The definition “undertaking in difficulty” (UID) should be simplified. Specifically, mezzanine capital should be recognized as part of equity when assessing whether a firm qualifies as an undertaking in difficulty. Furthermore, it is proposed that, for small and medium-sized enterprises (SMEs), only the existence of grounds for insolvency under domestic law should justify UID status

Legal reference Draft Commission Regulation for the General Block Exemption Regulation (GBER) **Article 4 – paragraph 1-7**	
Current text in the draft Commission Regulation	**Proposed Amendment**
4. A Member State or entrusted entity shall provide aid in the form of a public contribution to the intermediaries. … 7. The following requirements shall apply to the intermediaries (including an entrusted entity also acting as intermediary): (a) They shall be selected through an open, transparent and non-discriminatory call, in accordance with applicable Union and national laws, and all interested intermediaries shall have an opportunity to participate. There shall be no discrimination on the basis of their place of establishment or incorporation in any Member State. (b) They shall be managed on a commercial basis and shall ensure profit-driven financing decisions. (c) They shall be obliged by law or contract to act with the diligence of a professional manager in good faith and to avoid conflicts of interest. (d) They shall be subject to regulatory supervision. (e) They shall be able to demonstrate that they have relevant expertise in evaluating and selecting the types of aid beneficiaries and projects eligible under the applicable article in Chapter III of this Regulation referred to in paragraph 2 above.	4. A Member State or entrusted entity shall provide aid in the form of a public contribution to the intermediaries, **to be passed on to the final beneficiaries.** … 7. The following requirements shall apply to the intermediaries ~~**(including an entrusted entity also acting as intermediary):**~~ (a) They shall be selected through an open, transparent and non-discriminatory call, in accordance with applicable Union and national laws, and all interested intermediaries shall have an opportunity to participate. There shall be no discrimination on the basis of their place of establishment or incorporation in any Member State. **This requirement does not apply if the intermediary has also been assigned the role of entrusted entity for the disbursement of the aid.** (b) They shall be managed on a commercial basis and, **in consultation with the Member State,** shall ensure **that** ~~**profit-driven**~~ financing decisions **are as profit-driven as possible.** (c) They shall be obliged by law or contract to act with the diligence of a professional manager in good faith and to avoid conflicts of interest. (d) They shall be subject to regulatory supervision. **This requirement does not apply if the intermediary has also been assigned the role of entrusted entity for the disbursement of the aid.** (e) They shall be able to demonstrate that they have relevant expertise in evaluating and selecting the types of aid beneficiaries and projects eligible under the applicable article in Chapter III of this Regulation referred to in paragraph 2 above.

Justification Eligible recipients of aid include entrusted entities and financial intermediaries at the fund level, as well as final beneficiaries in the subsequent process of granting loans, guarantees, or equity investments—including in conjunction with grants. The structure and wording of the proposed regulations do not adequately address these requirements. Paragraph 7 sets out requirements for entrusted entities that conflict with the characteristics of an entrusted entity and the definition in Article 2 Number (88). For instance, an entrusted entity may also be directly appointed in accordance with European public procurement regulations. The requirement for selection through an open, transparent, and non-discriminatory call for proposals in accordance with applicable Union and Member State legislation contradicts this. Furthermore, the requirement for a profit-oriented financing decision (see paragraph 7 point (b)) restricts the grounds for granting state aid to address market failure. The requirement for a profit-driven decision excludes a great many relevant cases. For example, the granting of a loan to an SME for an environmental protection measure could fail to meet this criterion if the SME does not have a credit rating sufficient for a profit-driven decision. The expression of 'relevant experience' is too vague, it will raise numerous questions during audits, will cause uncertainty that will further slow the launch of financial instruments

Legal reference Draft Commission Regulation for the General Block Exemption Regulation (GBER) **Article 9 – paragraph 5**	
Current text in the draft Commission Regulation	**Proposed Amendment**
5. State aid exempted under this Regulation shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those set out in Chapter III of this Regulation.	~~**5. State aid exempted under this Regulation shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those set out in Chapter III of this Regulation.**~~
Justification The provisions in paragraph 5—Cumulation with de minimis aid—are contradictory, as de minimis aid does not constitute State aid under Article 107(1) TFEU and only becomes such in the event of cumulation. It is therefore proposed that this provision be deleted.	

Legal reference Draft Commission Regulation for the General Block Exemption Regulation (GBER) **Article 56 – paragraphs 11 and 12** **…**	
Current text in the draft Commission Regulation	**Proposed Amendment**
11. The aid intensities shall not exceed: …	11. The aid intensities shall not exceed: … **(d) Notwithstanding points (a), (b) and (c), the amount of aid may also be determined as the simplified financing gap of up to 100% of the investment costs, provided that the aid is not granted through a financial instrument.**
12. If the aid is provided in the form of a financial instrument via one or more intermediaries, then the following conditions shall apply:	12. If the aid is provided in the form of a financial instrument via one or more

(a) The intermediaries shall be either an energy efficiency fund or a financial intermediary. An 'energy efficiency fund' or 'EEF' means a special investment vehicle set up for the purpose of investing in projects to improve the energy performance of buildings. EEFs must be managed by a professional management company with legal personality, which selects and invests in such projects. (b) The intermediaries shall pass on the aid to the final beneficiaries in the form of loans, guarantees or grant components or a combination thereof. (c) Paragraphs 6 and 7 shall not apply when the financial instrument does not contain a grant component. (d) Paragraph 11 shall not apply	intermediaries, then the following conditions shall apply: (a) The intermediaries shall be either an energy efficiency fund or a financial intermediary. An 'energy efficiency fund' or 'EEF' means a special investment vehicle set up for the purpose of investing in projects to improve the energy performance of buildings. EEFs must be managed by a professional management company with legal personality, which selects and invests in such projects. (b) The intermediaries shall pass on the aid to the final beneficiaries in the form of loans, guarantees or grant components or a combination thereof. (c) Paragraphs 6 and 7 shall not apply when the financial instrument does not contain a grant component. (d) **Notwithstanding subparagraphs (a) and (b), the financial instrument may also be implemented in accordance with the provisions set forth in Article 4 of this Regulation.** (~~d~~e) Paragraph 11 shall not apply
Justification In the description of the methods for calculating aid intensity, the calculation based on a simplified funding gap is missing, provided that the aid is not granted through a financial instrument. Furthermore, it is not clear why Article 4 establishes general provisions for financial instruments through which the aid measures listed in Chapter III may be granted, yet makes no reference to these provisions in the context of building-related energy efficiency measures; instead, paragraph 12 point (a) effectively excludes such measures through specific provisions for an energy efficiency fund.	