State Aids
General Block Exemption Regulation

"A step in the right direction - but further simplification is needed!"

CEMR response to the 1st and 2nd consultation on the General Block Exemption Regulation

September 2013

Draft DG Competition proposal declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation – GBER)

CEMR Key Messages

1. The GBER revision is helpful as it provides greater legal certainty that public support, in a number of fields, does not always require notification to the European Commission.
2. CEMR recognises that important exemptions are outlined in the proposal for relevant areas such as regional investment aid; aid for SME development; aid for research and innovation; etc.
3. We call on the Commission to further expand the scope of the Regulation in future to also exempt aid for activities such as heritage, culture, sport and tourism.
4. Equally, a maximum of aid to support public service delivery (services of general economic interest) should be exempted under future revisions of the State Aid to SGEI legislative package.
5. CEMR calls for higher aid intensity for research infrastructures and higher thresholds for start-up aid and environmental aid in order to encourage activities, which are crucial for smart, sustainable and inclusive growth.
6. The regulation should offer a more flexible approach for infrastructure projects and broadband networks to ensure the success of local infrastructure projects and full broadband coverage in the Member States, and in particular in rural regions.
7. Despite delivering some ‘simplifications’, the draft Regulation is 72 pages long and more detailed and complex in some areas than the current version. The Commission should aim not only to simplify state aid procedures but also to shorten the GBER text by removing some of the many detailed requirements (e.g. on publication and reporting).
8. The future State Aid regime should be growth-focused and contribute not only to Europe 2020 objectives, but also Treaty objectives such as territorial cohesion whenever possible.
9. Above all the future arrangements for aid awarded under GBER must be simple, clear and allow maximum flexibility for local and regional authorities to continue to tackle the wide range of challenges they face during tough economic times.

Introduction and General Comments

1. The Council of European Municipalities and Regions (CEMR) is the European umbrella organisation and largest association of local and regional governments in Europe. Its members are over 50 national associations of towns, municipalities and regions from 40 countries. Together, these associations represent some 150,000 local and regional authorities in Europe.

2. We welcome the principle of revising the GBER as part of the European Commission's wider efforts to modernise and simplify the entire state aids framework. The consultation on the draft regulation is also welcome and allows us to provide views on behalf of those who have to work with the rules on a daily basis.

3. The GBER revision is helpful for practitioners as it provides greater legal certainty that public support, in a number of fields, does not always require notification to the European Commission. In particular we recognise that important exemptions are outlined in the GBER for: regional investment aid; aid for SME development; aid for research and innovation; aid for training; aid for disadvantaged and disabled workers; and aid for environmental protection.

4. These exemptions are vital to facilitate the timely and efficient delivery of local and regional projects which support businesses and their workers. CEMR therefore stresses the need for as much aid as possible to be subject to a simplified approach and exempted from the need for notification under the GBER.

5. In this light, and following the adoption of the new enabling regulation CEMR would like to see as many categories of aid as possible included in the revised GBER, and at least those areas where the Commission has sufficient case experience:
    - making good the damage caused by natural disasters;
    - social aid for transport for residents of remote regions;
    - certain broadband infrastructure;
    - innovation;
    - culture and heritage conservation;
    - sports and multifunctional infrastructure.

6. Furthermore, CEMR would like to suggest further categories where the Commission may have limited experience, and less developed assessment criteria, but should be included in a future GBER:
    - making good the damage caused by certain adverse weather conditions in fisheries;
    - forestry;
    - infrastructure in general if it concerns local infrastructure projects beyond "multifunctional recreational infrastructure";
    - promotion of food sector products not listed in Annex I of the TFEU;
    - conservation of marine and freshwater biological resources;.

7. Equally, a maximum of aid to support public service delivery (services of general economic interest) should be exempted under future revisions of the State Aid to SGEI legislative package.

8. We note that despite delivering some 'simplifications', the draft regulation is more detailed and complex in some areas than the current version. This will make its application more difficult for practitioners. The Commission should aim not only to simplify state aid procedures but also to shorten the GBER text by removing some of the many detailed requirements.

9. Furthermore, we think that it would be useful to include a reference to the specific regimes for public passenger transport (Article 9 of Regulation 1370/2007) and for Services of General Economic Interest. This would make it easier for practitioners to navigate between different pieces of EU state aid legislation.

Specific comments

CHAPTER I

Article 1: Scope of the regulation

10. On the whole, the proposed changes to GBER appear positive: expanded scope, raising of the notification thresholds, the new approach for very large schemes etc. We welcome the horizontal and vertical extension of the scope as it will reduce administrative burdens. The philosophy is the right one: simplification and clarification of the rules wherever possible, combined with safeguards to ensure an effective internal market.

11. Whist we welcome the fact that investment aid for energy efficient district heating and cooling is now covered by the GBER, we suggest that culture, heritage conservation and amateur sports, which are mentioned in the Enabling Regulation, should also fall under the scope of the GBER.

Article 6: Incentive effect

12. We are in favour of deleting paragraph 3, which means an additional burden when proving the incentive effect of aid to large enterprises. The related Annex IV should also be deleted (application form in order for incentive effect). These questions are already part of written applications and we believe that a specific form is not necessary.

Article 10: Publication and information

13. In principle, any new publication and information requirements upon local and regional authorities should be kept to a minimum.

14. **The new provision that Member States shall publish relevant and detailed information about granted aid on a single website may well lead to additional bureaucracy**. This goes against the objective of simplifying the state aid regime. More efficient ways should be examined in order to avoid administrative burden.

15. We understand that it might be useful for the public interest to keep a record of aid given and aid beneficiaries. However, we believe that this should be done by optimising existing arrangements in place, rather than creating a new database.

16. The principle should remain that the aid beneficiary should be the one to keep records of received aid. Only the beneficiary will have a full picture of aid it receives from different levels and parts of government, whether at local, regional, national or EU level.

CHAPTER III: Specific Provisions for the Different Categories of Aid

Section 1 – Regional Aid

Article 15: Regional investment aid

17. We note that according to the current compromise, investment aid to large enterprises in ‘c’ regions shall only be granted in favour of a ‘new activity’ (Art.15.4). **We reject this approach to limiting aid to large companies and believe the present regional aid arrangements are preferable as they allow the ability to support growth and jobs in ‘c’ areas even if the beneficiary has more than 250 employees.**

18. We believe that some of the provisions in this article are too detailed and not in line with the principles of subsidiarity and proportionality e.g. the detailed requirements relating to assets and equipment.

19. We welcome the fact that EU Structural Funds delivered via operational programmes will seemingly fall under the GBER (as suggested by paragraph 3). **The treatment or exemption of EU funds as delivered via operational programmes should be expressed more clearly in the GBER.**

20. The Commission should continue to monitor that State aid rules do not impede the delivery of projects supported by EU funds. This has been an area of concern in the past: practitioners have raised queries even in relation to very small amounts of aid.

21. As a principle we believe that assisted area status should not only relate to regional investment aid but should also trigger bonuses, such as higher intervention rates, in other aid types: environmental aid, research and innovation aid etc. This would help to build territorial cohesion across the EU by reducing regional development disparities.

Aid for infrastructure

22. We note the recent ECJ Leipzig-Halle judgement (C-288/11 P), which ruled that public funding of infrastructure construction for subsequent commercial use, is an economic activity, and shall be considered prima facie as State aid to the operator. This is a stricter interpretation of the rules than previously and does not take sufficiently into account the fact that public sector participation is often essential to ensure the success of large infrastructure projects.

23. The EU State aids framework should therefore offer a more flexible approach. Infrastructure projects linked with social housing for example such as roads, playgrounds, parks, schools or other buildings or services which support social housing should not be seen as an economic activity.

Aid for broadband

24. Concerning aid for broadband networks (Art.15.9), we believe that the provisions are too strict and would in practice be difficult to fulfil e.g. the requirement that the network operator must offer active and passive wholesale access. Again the approach should be more flexible to allow public investment of all types to play a part in achieving full broadband coverage in each and every Member State. This is particularly important in rural regions with regard to reaching equal living conditions for citizens as well as providing an environment which attracts SMEs.

25. There is confusion concerning the understanding of the relationship between Art.14.1b and Art. 15 paragraph 9 of the Commission's draft. Art. 14.1b states that the Regulation shall not apply to regional aid in the form of schemes aimed at broadband infrastructures whereas Art. 15 paragraph 9 states that regional aid for broadband network development is under certain conditions generally allowed. Does this mean that if a Member State provides a scheme for broadband infrastructure, the rules do not apply? The Commission should provide clarification on this issue.

26. In fact improving connectivity, particularly for Next Generation Broadband, should be considered favourably and awarded higher intervention rates under the future state aids framework in line with the Digital Agenda and Europe 2020 goals.

European Territorial Cooperation

27. Local and regional authorities are strongly committed to European Territorial Cooperation (ETC) projects such as those financed by the Interreg programme. The Commission is right to address the issue of different aid intensities for different consortium partners (Art 15.12), as these disparities have been an issue in the past.

28. However transaction costs for businesses to enter into ETC projects have been too high. So, in light of the pressing need for a greater incentive, we call for the common aid intensity for all project partners to be **the *highest* aid intensity level enjoyed by any partner within the consortium, rather than the location of the initial investment.**

29. We would again question why the new provision for the compensation of cooperation costs (Art.18) is limited to SMEs only. Companies of all sizes should be incentivised to participate where they can add value to an ETC project, especially given that the aid intensity is set at a maximum of only 50% of the eligible costs.

Section 2 – Aid for SMEs

Article 20: Aid for start-ups

30. We note the simpler thresholds proposed for aid for start-ups: up to €400,000 for grants to business in non-assisted areas and bonuses for those in assisted areas; as well as bonuses for small and innovative enterprises. **The Commission should set these maximum amounts as high as possible to encourage the support of business start-ups.**

Section 3 – Aid for research and development and innovation

Article 23: Aid for research and development projects

31. As mentioned previously, regional bonuses for research and development projects in assisted areas are welcome as they should help build territorial cohesion across the EU. However the actual bonuses available (Art.23.6c) appear minimal and we would question why they only apply to large enterprises.

Article 24: Investment aid for research infrastructures

32. The inclusion of research infrastructures and innovation aid under GBER is welcome reflecting the Europe 2020 emphasis on promoting research and innovation. Local and regional authorities often play a key role in supporting research centres, and science and innovation parks.

33. Clarifications are needed in relation to paragraph 4. '50% of the investment costs': does this mean all the costs or the costs minus the aid? Concerning the preferential access for undertakings having financed at least 50% of the costs, does this relate to market prices?

34. **The aid intensities suggested in paragraph 6 are too low given the importance of research infrastructures to the EU's competitiveness. We would call for the basic (pre-bonuses) aid intensity to be 50% rather than 25%.**

Article 25: Innovation aid for SMEs

35. The scope of eligible costs for innovation aid for SMEs should be as broad as possible. It is especially important to include technical support delivered via third parties as an eligible cost for example.

Section 4 – Training Aid

Article 27: Training aid

36. CEMR regrets further restrictions for training aid in comparison to the current GBER. The aid intensities as well as the eligible costs are more restrictive; for example it will not be possible in the future to cover any personnel costs of the trainee as well as general indirect costs.

Paragraph 2 should be deleted: aid should also be possible for training to ensure that companies comply with national mandatory standards on training.

Section 5 – Aid for Disadvantaged and Disabled Workers

Article 28: Aid for the recruitment of disadvantaged workers or of the employment of disabled workers in the form of wage subsidies

37. CEMR welcomes the increased aid intensities for disadvantaged and disabled workers, and the proposals to simplify this area of aid. We also welcome the fact that young people aged 14-25 can now fall within the definition of a disadvantaged worker.

Section 6 – Aid for environmental protection

38. **A higher threshold for environmental aid is necessary: €15m instead of €7,5m, as outlined in Art.4(l).** Operating cost in the field of environmental aid should be allowed, as partly already foreseen in the environmental aid guidelines. For simplification, an environmental aid above the threshold should not automatically lead to an obligation to notify. We propose to use the standard procedure foreseen in the environmental aid guidelines, leaving only very high levels of aid requiring notification.

Article 33: Investment aid for high-efficiency cogeneration

39. A megawatt (MW) capacity threshold as decisive for the granting of aid for cogeneration under the GBER is unreasonable. There are thresholds in Art.4 for the overall aid sums. The capacity itself does not affect the efficiency or environmental benefits of high-efficiency cogeneration or energy from renewable sources. A threshold may lead to high aid intensities per MW for small cogeneration but no aid for bigger installations. Operating costs should be partly eligible for aid; especially additional costs caused by security of supply requirements. An objective test taking into account market data would be the best way to ensure that only these additional costs are covered.

Article 34: Investment aid for the promotion of energy from renewable sources

40. We support the idea of regional bonuses for environmental aid: grants which favour energy from renewable sources, cogeneration, district heating etc.
41. However, the new competitive procedure outlined in Art 34.8 may conflict with primary law (Art 194.2 TFEU) which states that Member States are free to determine the conditions for exploiting their energy resources and to choose between different energy sources.

ANNEX II SME Definition

42. Cities and regions continuously strive for potential efficiency gains when it comes to the provision of public services. Therefore, over recent decades they have founded their own enterprises or have taken shares in existing enterprises. This allows for sound financial management by the public sector. At the same time such entities must be enabled to compete against private stakeholders.
43. Thus, CEMR emphatically calls for a non-discriminatory treatment of such public enterprises when it comes to state aid. **We therefore strongly reject the exclusion of such publicly-owned entities from the scope of the SME definition outlined in Annex II, Article 3.4.**

Further comments

Awareness of state aid issues

44. Because of a varied understanding of the rules amongst some practitioners, even relatively small amounts of aid may raise state aid queries and create uncertainty. This applies whether aid is delivered under the GBER or another type of aid. Some practitioners may therefore be uncertain for example about interactions between:
    - the current and the new *de minimis* Regulation
    - the current and new General Block Exemption Regulation (GBER) covering a wide range of sectors and aid types
    - the various current and new sectoral 'guidelines', such as those recently published for regional aid 2014-2020
    - existing aid schemes, or ad hoc aid awards already authorised by the Commission. It is not always easy to build up a picture of what has already been authorised, including any rules linked to spending of the structural funds,
    - other possibilities for case-by-case exemptions of new aid schemes or ad hoc aid to be examined and approved by the Commission,
    - ECJ case law.
45. The relatively complicated regime combining these six elements means that local authority practitioners can need to seek advice from their national association or government to help them navigate the rules and ensure legal certainty in aid activities. Whilst local authorities have dedicated procurement officers, or legal officers, they do not have dedicated state aid officers. This requires governments to produce, guidance notes and manuals. Such guidance should always be produced in conjunction with local and regional authorities themselves.
46. It is possible to foresee the development of an online web tool to sign-post and help public authorities better navigate the different pieces of state aid legislation. The local area, amount, duration, and type of aid could be input and an initial sign-post could be given to the appropriate Regulation, 'Guidelines', Decision, Framework, scheme, similar ad hoc awards already approved, relevant ECJ cases, and EU or member state guidance materials.

Final remarks

47. The proposed GBER is 72 pages long. Whilst the GBER may offer certain simplification benefits, it should also be simplified in its presentation as much as possible.
48. The regime should be growth-focused and contribute not only to Europe 2020 objectives, but also Treaty objectives such as territorial cohesion whenever possible.
49. The economic crisis has shown that State aid policy should not be a tool for restricting public spending nor an instrument to curb valuable structural and sectoral policies. **Democratically elected politicians, responsible to the electorate, are in the best and most legitimate position to decide how to spend public money**.
50. SGEIs for example should be defined on the local, regional, or national level and not through the backdoor by the Commission's State aid policy, as for example it was for social housing in the Netherlands. Here the Commission accepted an income level, which is decisive for the right to access social housing and therefore defined an SGEI on the European level.
51. Another example is the animal disease counter measures (slaughterhouse activities), in Germany, as regards providing facilities to deal with the outbreak of an epidemic, a service,

which has been defined as an SGEI by the responsible German authorities. The Commission's decision in April 2012 denied its definition as an SGEI, thus putting itself in the place of local and regional authorities to define whether or not a certain activity is an SGEI.

52. Above all the future arrangements for aid awarded under GBER must be simple, clear and allow maximum flexibility for local and regional authorities to continue to tackle the wide range of challenges they face during tough economic times.

53. CEMR has submitted a separate response to the *de minimis* consultation, showing the need for a significantly higher threshold (€500,000) rather than the one that has been in use for many years (€200,000), allowing the Commission to concentrate on larger awards of aid. **When awarding such low levels of aid local and regional authorities are always supporting real projects on the ground which benefit local communities and serve a common public interest.** This should outweigh any perceived threat to competition in the Internal Market.

54. Following consultation, CEMR will be submitting a separate response on the recently published guidelines on State aid to regional airports.

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About CEMR

The Council of European Municipalities and Regions (CEMR) is the broadest organisation of local and regional authorities in Europe. Its members are over 50 national associations of municipalities and regions from 41 European countries. Together these associations represent some 150 000 local and regional authorities.

CEMR's objectives are twofold: to influence European legislation on behalf of local and regional authorities and to provide a platform for exchange between its member associations and their elected officials and experts.

Moreover, CEMR is the European section of United Cities and Local Governments (UCLG), the worldwide organisation of local government.

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