

European Commission  
Directorate-General for Competition  
Unit A.3

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# HT.6365 - Public consultation on the General Block Exemption Regulation (GBER)

**Here follows the response of the Confederation of Swedish Enterprise on the European Commission public consultation of the General Block Exemption Regulation (GBER).**

The response is structured as follows. First, we set out our general position on State aid. We then comment on a number of proposed changes in the introductory, general chapter. This is followed by comments on proposed amendments structured according to the Commission's own thematic grouping of the amendments, namely: simplification and streamlining of the GBER, and adaptation of the GBER to policy, social, market and technological developments. Finally, we present certain more detailed comments.

We note that the Commission has not presented any impact assessment of the changes it proposes to the GBER. This is highly surprising and regrettable, given the central role played by the GBER, under which most State aid measures are granted, and the fact that the number of cases has steadily increased year on year.

## Swedish Enterprise general position

The Confederation of Swedish Enterprise advocates a strict State aid regime. State aid should only be used in exceptional circumstances, primarily where there is a clear market failure and where no other policy instruments are more appropriate. This is due to the distortive effects on competition that State aid typically entails—both between individual undertakings and between countries. In general, State aid is not an effective tool for promoting long-term competitiveness. It is therefore essential that the regulatory framework continues to limit Member States' ability to use State aid as a policy instrument.

At the same time, we support the approach launched through the State aid modernisation initiative that began in 2012. Two of the main objectives of the modernisation were to focus

the Commission's scrutiny on cases with the greatest impact on the internal market, and to streamline the rules in order to enable faster decision-making. A key element of this strategy was the expansion of the GBER, allowing more State aid measures to be adopted directly by Member States without prior Commission approval, provided that the conditions of the GBER are fulfilled.

## Introductory general chapter

- The requirement to carry out ex post evaluations of large aid schemes is proposed to be removed to reduce administrative burden. The Commission argues that Member States can draw on the experience gained from evaluations conducted over the past ten years when designing future aid measures, and may continue to conduct evaluations outside the State aid process. While we acknowledge the aim of administrative simplification, we consider that evaluations still play an important role in justifying why State aid is the most appropriate policy tool, in ensuring proportionality, and in assessing effectiveness. A middle-ground solution should therefore be considered, whereby evaluation requirements are tailored and narrowed, and schemes for which evaluations have already been carried out may be exempted.
- The Commission invites proposals for changes to the definition of undertakings in difficulty, in particular as regards start-ups, which should be excluded from automatic ineligibility for aid. Start-ups may often have a fragile financial situation that could otherwise lead them to be incorrectly classified as declining undertakings at risk of insolvency. We welcome the intention to introduce such a change, which has long been called for by many stakeholders. At present, we have no specific proposal as to the exact wording of the definition.
- The list of definitions is restructured and consolidated under Article 2, following the order in which the terms appear in Chapter III. At the same time, certain definitions still appear separately under the provisions on airports and ports. We would have preferred that all definitions be collected under Chapter II. Consideration should also be given to listing definitions alphabetically, since readers otherwise cannot easily determine where to look for a given term.
- Thresholds for maximum aid amounts per article are moved to the relevant individual articles. This appears reasonable, as there is no practical advantage in keeping them consolidated elsewhere, and it is beneficial for such thresholds to be clearly visible in the relevant provisions.
- With regard to aid intensity, greater scope is proposed for the use of simplified cost options. This entails broader use of standardised cost calculations. We are generally positive towards this, provided that such standard costs are established in a credible manner by a competent authority. This should be described in detail in the accompanying guidance document. Simplified cost options should primarily be used for smaller aid amounts and where multiple small cost items are involved. In such cases, simplification would significantly reduce administrative burden for undertakings and increase predictability for both granting authorities and beneficiaries, while keeping deviations from actual costs at an acceptable level.

## Simplification of the GBER

- The Commission proposes simpler conditions for small aid measures with a low risk of distorting competition, such as aid to SMEs, training, and infrastructure. This requires further analysis, but may constitute a reasonable step towards simpler procedures and reduced administrative burden. It should be emphasised, however, that higher aid levels in themselves do not constitute simplification; rather, simplification should be achieved through streamlined processes and reporting requirements, for example via simplified cost options.
- Higher aid intensities (as a percentage of eligible costs) are proposed for certain small investment aid measures in R&D and environmental protection. In practice, this would extend to non-SMEs the higher aid intensities already applicable to SMEs. The Commission argues that such measures will in practice mainly benefit smaller undertakings, as these are more likely to carry out small-scale projects. We are cautiously positive towards this change, as it promotes simplification and more equal treatment irrespective of firm size.
- A new category of applied research is proposed to bridge the definitional challenges between industrial research and experimental development. We are preliminarily positive towards this addition.
- For environmental aid, greater reliance on aid intensity as a percentage of eligible costs is proposed instead of funding-gap calculations or competitive bidding processes. Aid intensity is generally a less precise method for ensuring proportionality, but it constitutes a significant simplification. Funding-gap calculations can be complex and uncertain, often involving negotiation over assumptions. Competitive tenders are, in principle, an effective way to determine the minimum necessary aid, but they are time-consuming and administratively burdensome. We are therefore open to increased use of aid intensity, but primarily for smaller aid measures, where costs are well understood and stable, and/or where other methods are not suitable.
- In certain cases, the Commission proposes that all costs be eligible rather than using a counterfactual approach limited to incremental costs. We are open to considering a departure from counterfactual analysis where administrative burden is significant, provided that the approximate counterfactual cost level is known and aid intensities are adjusted accordingly so that the change in methodology does not lead to higher aid amounts as such.
- The current overall cap of EUR 300 million for operating aid schemes for renewable energy is proposed to be removed. We support this, as it appears inappropriate to impose a single cumulative cap across all schemes. Relevant caps should apply per scheme or per beneficiary, not based on a Member State's total aid budget. We also advocate that aid should be available to fossil-free technologies more broadly, not limited to renewables only.
- Aid should be allowed for energy storage without the current requirement that it be directly linked to renewable generation facilities. This is a reasonable change that

enables more business models and potential investors to develop such projects efficiently.

- Revised requirements for calculating utilisation levels of certain infrastructure are supported, for example where infrastructure receiving aid must be used for specific purposes (such as cultural activities) to a certain extent. Allowing utilisation to be calculated over a longer time horizon, such as ten years rather than annually, constitutes a reasonable simplification, reduces administrative burden, and allows flexibility without undermining the underlying objectives.

## Streamlining of the GBER

- The Commission proposes a number of structural changes, most of which are addressed above. These are generally supported, subject to reservations regarding the organisation of the definitions. The merging of inland ports and ports, as well as the clearer separation of investment aid and operating aid for airports within the same article, improve clarity and usability.
- A separate guidance document will be produced, moving descriptive examples, clarifications and methodologies outside the legal text, and including a frequently-asked-questions section. This is welcome, although it remains to be seen how detailed the guidance will be and whether it will include elements currently only available in the e-State Aid Wiki. While not legally binding, the Commission states that Member States should be able to rely on the guidance with a high degree of legal certainty. Whether this leads to more cautious guidance than currently available remains to be seen.

Delegation of greater responsibility to Member States presupposes enhanced competence and quality of State aid assessments at national level. The guidance document can assist in that context and also help undertakings, which bear the risk of recovery in the event of unlawful aid and cannot rely on good faith under established case-law.

## Adaptation to policy, social, market and technological developments

- The Commission proposes eased conditions for social enterprises, including reduced private co-financing requirements for risk-finance aid to SMEs, aid to start-ups, and energy efficiency measures. We are preliminarily cautious, as we favour equal conditions regardless of business or organisational form. To the extent that such measures address genuine market failures and ensure equal treatment, they may be acceptable.
- Higher aid levels are proposed for training in disadvantaged or sparsely populated regions, and for STEM and digital skills. Skills development is a key concern for business, but it is not primarily addressed through increased State aid. We have not yet reached a final position.

- For social and affordable housing, an additional 20% aid intensity for energy efficiency is proposed. We oppose this, as all tenure and organisational forms should operate under equal baseline conditions.
- Aid to SMEs and small mid-caps for innovative activities is proposed in the form of subsidised access to digital infrastructure and regulatory sandboxes. Access to such infrastructure is an important driver of innovation; we are therefore preliminarily positive, subject to further analysis.
- Risk finance: financing from the EIB/EIF is proposed to be treated as private co-financing. This requires further analysis, as it may create problematic incentives and excessive risk-taking.

## Other specific proposals

- *Article 14 - Scope of regional aid*  
We note positively that the steel sector continues to be excluded from eligibility for regional aid.
- *Article 2 – Definitions, and Article 32 - Aid for research and development projects*  
The definitions given could be perceived to be limited to research within certain technical fields. Examples are:
  - “Article 32.3: The aided part of the research and development project shall completely fall within one or more of the following categories: (a) fundamental research; (b) industrial research; (c) experimental development; (d) feasibility studies.”  
  
It is not sufficiently clear if innovations such as service innovations and social innovations are included. In fact, it could be disputed if even digital innovations are included in this phrasing. It should clearly state that research methods used in humanities and social sciences are included.
  - “Article 32.4 (d): costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;”  
  
This should also include for example licenses for software and clearly include research methods used in humanities and social sciences.
- *Article 36 - Aid for Teaming actions*  
In the article aid for Teaming actions are described. If results created in collaboration are going to be able to be used, it is vital that discussions on who is to own/do what are carried through already in the beginning. Otherwise, results may be impossible to take to market.
- *Article 39 - Aid for innovation clusters*  
This article should include as a condition that innovations clusters receiving aid for intangible assets must have elaborated strategies for intangible assets.

- *Article 41 - Innovation aid for SMEs and small mid-caps*  
In Article 41.3 (a) it is stated that costs for obtaining, validating and defending patents and other intangible assets are eligible costs. This phrasing focus on certain kinds of research and innovation, which may exclude for example digital innovation, rather focusing on registered rights, including (perhaps) intangible assets such as trade secrets. We believe that costs related to creating strategies regarding handling of intangible assets, including copyright arising with the creation of a work and trademarks used to commercialise service innovations, also should be considered as eligible.
- *Article 53 - Investment aid for recharging or refuelling infrastructure and Article 54 - Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles*  
Strengthening the conditions for the electrification of the vehicle fleet is a critical issue, both for achieving ambitious emissions-reduction targets and for enhancing the competitiveness of the European automotive industry. Effective policy instruments are necessary in this regard, and State aid can be one such instrument that creates the conditions for the transition to take place at a sufficiently rapid pace. In many cases, the cost gap remains significant, making more substantial support both necessary and proportionate.

We therefore consider that the proposed aid intensities for investment aid for charging and refuelling infrastructure, as well as for clean and zero-emission vehicles, remain too low. Given that eligible costs for vehicles are calculated on a counterfactual basis, we reiterate our previous position from the 2025 consultation that the baseline aid intensity should be increased from 20% to 40%.

In addition, we believe that for investments where the market failure and the cost gap are well established, aid should rather be calculable on the basis of total investment costs or a simplified funding-gap approach. The counterfactual incremental cost method should in such cases be the exception, not the norm.

- *Article 56 - Investment aid for energy performance measures in buildings*  
With regard to investments in energy efficiency in buildings under Article 56, we note that paragraph 9 may create difficulties in Sweden. In a system with regulated rents based on use-value, and where energy efficiency investments are combined with renovation works that also affect housing standards, the proposed limitation may be problematic. We therefore suggest considering an amended wording along the following lines:

*For social housing and affordable housing measures, the Member State shall ensure that the energy performance investment does not involve any **disproportionate** additional financial burden for the tenant.*

*This requirement shall be implemented in accordance with national systems of property law and rental market regulation, ensuring a **proportionate balance between tenant protection and the conditions necessary for investment in energy renovation.***

- *Article 79 – Aid for airports*  
Updated rules for aid to airports are proposed, including raising the passenger

threshold for eligibility from 200,000 to 500,000 passengers annually. This is strongly welcomed and long overdue, as it better reflects the passenger volumes required to cover fixed costs. Data suggests that a more suitable threshold, in fact, rather should be at 700 000 passengers, below which it seem very difficult to cover the fixed costs of running an airport, which in turn have increased over time as costs for in particular security arrangements and infrastructure have increased. While still possibly conservative, the proposed change represents a significant simplification and provides clearer operating conditions for many Swedish airports.