

31 March 2008

## **STATE AID Third Draft General Block Exemption Regulation**

### **1. INTRODUCTION**

BUSINESSEUROPE welcomes the publication of a third draft proposal for a general block exemption regulation. It is pleased that some of its suggestions on the second draft have been included in the new draft. Unfortunately, there are still points which in BUSINESSEUROPE's view would improve the regulation if they were to be adopted. These points are set out below.

In consideration of the complexity of some provisions and of the difficulties that national and local authorities may encounter in the application of the draft regulation, BUSINESSEUROPE repeats its suggestion that the exact functioning of these provisions is clarified in a memorandum or a formal guidance to the regulation, to be issued by the Commission.

The following comments on specific provisions of the draft regulation refer both to the articles and to the relevant recitals.

### **2. THIRD DRAFT GENERAL BLOCK EXEMPTION REGULATION**

#### *Scope*

It appears now from Article 1 para 3 (e) that the draft regulation will also apply to aid granted to undertakings active in the steel sector with the only exception of regional aid. BUSINESSEUROPE is pleased that its previous suggestions on this point have been taken into account.

#### *Definitions*

BUSINESSEUROPE welcomes the introduction of a specific definition of "individual aid" in Article 2 (3), but believes that the cross-references in the definitions of "individual aid" and "ad hoc aid" in Article 2 (4) are unclear and should be avoided.

#### *Transparency of aid*

As stated in the comments on the previous draft, BUSINESSEUROPE welcomes the application of the general block exemption regulation only to transparent aid. In this context, it welcomes the inclusion under Article 5 para 1(a) of aid comprised in grants and interest rate subsidies.

In the current draft, however, Article 5 still lists in para 1 certain types of aid which shall be considered to be transparent, while para 2 lists types of aid that shall not be considered to be transparent: this leaves a grey area in respect of types of aid listed in neither of these paragraphs (as is the case, for example, with aid in the form of subsidised input costs or reduced social security payments).

Given the need for maximum clarity in a block exemption regulation, BUSINESSEUROPE reiterates its suggestion that Article 5 para 1 should include an exhaustive list of examples of transparent aid, and that para 2 should be removed. This would avoid uncertainty and ensure uniform application of the regulation by Member States, thus reducing some of the risks inherent to decentralisation of state aid control. In addition, measures consisting in a reduction of social contributions on labour should also be included in the list of types of aid considered to be transparent.

BUSINESSUROPE also notes that the provisions contained in para 1 (c) for aid comprised in guarantee schemes are more restrictive than those provided for by the *de minimis* regulation. This discrepancy causes uncertainty and should be avoided, guaranteeing consistency between the general block exemption and the *de minimis* regulation.

#### *Individual notification thresholds*

BUSINESSEUROPE still supports the simplification of and further increase in the individual notification thresholds as set out in Article 6 of the new draft.

Article 6 para 1 (d) (i) and (ii) provide for different thresholds to be applied to aid for research and development projects and feasibility studies, depending on the project being predominantly “fundamental research” or “industrial research”. BUSINESSEUROPE suggests that definitions of fundamental and industrial research – currently provided only under the specific provisions on aid for R&D&I – are included in Article 2 of the regulation.

#### *Cumulation*

BUSINESSEUROPE in principle still supports the provisions on cumulation as set out in Article 7 of the draft, although they could still be difficult for national and local authorities to apply, especially in relation to the wording contained in para 3 “partly or fully overlapping” and the different wording in the *de minimis* regulation. BUSINESSEUROPE therefore suggests the elimination of this wording and repeats its suggestion that the exact working of these provisions in practice is again clarified, with concrete examples, in a memorandum to the regulation.

#### *Incentive effect*

As regards the requirement that specific proof is given of an incentive effect for aid to be block-exempted (Article 8 para 3), BUSINESSEUROPE has always had concerns that this might give rise to legal uncertainty, placing companies in a situation where they cannot be certain whether the documentation provided to the

authorities is sufficient. These concerns have now increased following the inclusion of an undefined “material increase” standard. This addition increases the risk that different Member States might apply different standards for verifying whether the criteria set out in paras 3 (a), (b) and (c) are met. BUSINESSEUROPE suggests that the word “material” is deleted. At the very least, a clarification of how “material increase” should be evaluated would be essential.

In addition, BUSINESSEUROPE believes that the criterion related to increased speed – currently applicable under the Framework for Research, Development and Innovation – should also be included, while the increase in the amount should be referred to total aid-related spending generally (and not only on the project or activity in question).

#### *Transparency*

BUSINESSEUROPE is pleased that the issue of transparency is still emphasised in the new draft and especially supports the proposal to consider the express reference to the Commission’s unique identification number as a condition for exemption, even though it notes that all aid taking the form of a fiscal measure is still excepted.

In this context, BUSINESSEUROPE expresses a preference for Article 9 (compared to Article 9bis) as its provisions provide for increased transparency. With the same objective in view, Article 9 para 2 should indicate the Commission (rather than the Member States) as responsible for publishing on the Internet the information received by Member States on the aid measures entering into force.

#### *Monitoring and reporting*

BUSINESSEUROPE believes that enhanced monitoring – together with increased transparency – is an important tool to counterbalance some of the risk of more decentralisation. To further enhance monitoring, BUSINESSEUROPE would like to repeat its suggestion that Article 9 para 8 is strengthened by making notification of future aid measures mandatory in case a Member State does not provide the information needed to monitor application of the regulation, substituting the wording “the Commission may” with “the Commission shall” in the second sentence of Article 10 para 3.

BUSINESSEUROPE would also like to see clearly spelt out that the national annual reports on the application of the regulation, in accordance with Article 11, are published on the Internet and available to the public.

#### *Specific conditions for Investment aid – regional aid*

In order to establish a level playing field for all enterprises, BUSINESSEUROPE suggests that, in the context of Article 12 para 2 (d), a single term of four or five years is set for all undertakings. The same rationale should be applied to the following article 13 where – in para 2 – a single minimum period should be

provided for with regard to the length of the regional investment aid measure granted by the Member States.

### **3. SPECIFIC PROVISIONS – BLOCK-EXEMPTED AID MEASURES**

#### *Investment and employment aid*

With respect to investment and employment aid for SMEs, BUSINESSEUROPE also still supports the increase of the applicable basic aid intensity to 20% for small enterprises and 10% for medium-sized enterprises.

#### *Environmental aid*

BUSINESSEUROPE would like to restate its support for the incorporation of environmental aid in the general block exemption regulation and it particularly welcomes the introduction in Article 15 of new section (c) (ii) and the inclusion of all hydropower installations independently of their capacity in the definition of renewable energy sources under section (d). However, it notes that the insertion of the word “notably” in section (b) of the same article adds an element of possible confusion and should be removed.

BUSINESSEUROPE considers that the new formulation of Article 16 para 6 on waste management provides for further clarity and therefore welcomes the modification.

With regard to energy savings, BUSINESSEUROPE believes that the formulation of Article 18bis appears to be more balanced and BUSINESSEUROPE therefore favours this new alternative proposed by the Commission. Subordinately, if the choice should be made for Article 18, BUSINESSEUROPE suggests that the aid intensity should not exceed 35%, as in the previous draft. Additionally, BUSINESSEUROPE would like to seek clarification on the reason why the new para 3 (c) has been added, providing for discriminatory treatment of undertakings included in the scope of the EU Emissions Trading Scheme.

With respect to investment aid for renewable energy, BUSINESSEUROPE again suggests that the aid intensity foreseen in Article 20 para 2 should have been kept at 35% as in the previous version.

#### *Tax reductions*

BUSINESSEUROPE supports the explicit reference to the possibility for Member States to renew tax reduction schemes after the expiry of the ten-year limit and the re-evaluation of the appropriateness of measures concerned.

#### *Risk capital*

BUSINESSEUROPE also still supports exemptions for aid in the form of risk capital in the regulation on conditions which mirror those in the risk capital

guidelines. It also still supports the limitation to six years of the duration of the scheme, as provided for by Article 26 para 9.

#### *Research, development and innovation*

With respect to aid for research, development and innovation, BUSINESSEUROPE is very pleased that it is still proposed to let also large firms benefit from exemption. BUSINESSEUROPE still welcomes the reference to prototypes and pilot projects under “experimental development”. However, it repeats that it has strong reservations about the linear innovation model which is used for assessing R&D&I aid projects. These reservations are set out in its comments of 30 May 2006 on the DG Competition staff paper on the draft Framework for Research, Development and Innovation.

With respect to an R&D project being carried out in collaboration between research organisations and undertakings, BUSINESSEUROPE repeats its suggestion that the condition foreseen by Article 28 (3) last sentence should be complemented with the conditions provided for by section 3.2 of the Framework for Research, Development, and Innovation, under which contributions from research organisations to a collaborative R&D project with undertakings constitute aid.

In addition, BUSINESSEUROPE still believes that some clarification – e.g. through clear operational guidelines in the suggested memorandum – is needed to determine the combined aid intensity from direct government support and indirect aid through the contributions from research organisations. This would give more certainty to research organisations about the proper functioning of this provision and avoid the risk of its inconsistent application in the different Member States.

#### *Training aid*

With respect to training aid, BUSINESSEUROPE still believes that the distinction between general and specific training should be clarified with more examples.

BUSINESSEUROPE also would like to repeat the suggestion that it is clarified in the regulation, possibly in the recitals or in the suggested memorandum, under what conditions training measures are general measures which do not constitute state aid, in line with recital 6 of the existing block exemption on training aid. Such clarification would be very useful as guidance to determining whether training measures do not fall within the scope of Article 87 (1).

#### *Employment aid*

With respect to aid for disadvantaged and disabled workers, BUSINESSEUROPE would like to seek clarification regarding the application of Article 35 para (5) and Article 36 para (5) in case the national legislation governing employment contracts in a Member State does not provide for a minimum period of continuous employment.

*Better regulation*

Finally, and as previously stated, BUSINESSEUROPE still believes that an impact assessment carried out in accordance with the Commission's impact assessment guidelines could provide valuable insights into the practical functioning of the block exemption regulation and could in addition provide the Commission with a valuable opportunity to assess and quantify any reductions in administrative burdens which will result from the new policy.

*Enforcement of general block exemption regulation*

BUSINESSEUROPE repeats its suggestion that the Commission should elaborate further on the role of national judges with respect to the application of the general block exemption regulation in a vademecum or in the suggested memorandum.

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