BUSINESSEUROPE

POSITION PAPER

20 December 2021

General Block Exemption Regulation (State Aid)
Targeted review

Introduction

BusinessEurope supports revising the General Block Exemption Regulation (GBER) to align it with the revision of the Energy and Environmental Aid Guidelines, the Regional Aid Guidelines, the Research, Development and Innovation Framework, and the Risk Finance Guidelines. The green and digital transition will require huge transformative investments by both the public and private sectors and European businesses should be supported in their transformation towards climate neutrality, sustainable growth, job creation and prosperity. The EU State aid rules have an important role to play in achieving this and the GBER should reflect this.

BusinessEurope thus welcomes the proposals regarding environmental and energy aid and the associated extension of the scope of application of the GBER, the extension of the range of exempted aid measures, as well as the increase of the notification thresholds for climate, energy and environmental aid. We also welcome the inclusion of the circular economy and proposals that the GBER now also covers investment aid for leasing clean or zero-emission vehicles.

EU State aid policy should support good aid, such as aid that contributes to the green and digital transition, while fundamentally safeguarding a market driven European economy. The State aid rules give the Member States considerable opportunity to support projects that contribute to the green and digital transition, but the relevant rules and frameworks can be improved to reduce administrative burdens and encourage investment in sustainable projects whilst ensuring that any distortive effects of the subsidies are limited.

BusinessEurope has made suggestions on how to improve the different rules when responding to relevant Commission consultations, such as those regarding the State Aid Modernisation, the call for contributions on how Competition Policy can support the Green Deal, and lastly, the proposed Climate, Energy, and Environmental Aid Guidelines that were published this summer. These recommendations and comments regarding the revision of the different State aid rules are still valid and, in this context, we refer to our earlier papers, which are attached for ease of reference.

Competition and State aid policy should ensure that effective competition between companies exists. As such it contributes to efficient markets, investments, and innovation, to develop market-based sustainable solutions and technologies. It is important that subsidies address market failures (when the market does not remunerate the investor for the investment) and that any distortive effects of the subsidies are limited.

BusinessEurope believes that large aid schemes should continue to be the subject of an individual examination by the Commission to ensure that these principles are followed and that the aid beneficiaries obtain the necessary legal certainty to carry out the project. In addition, Member States should consider other general policies to reduce costs for businesses and adjust their tax systems to support the green and digital transition and minimise the use of State aid. Such measures typically do not distort the market and can result in lasting positive effects for business.

General Comments

The earlier expansion of the GBER and the State aid modernisation have increased discretion for the Member States. However, increased discretion has also increased the risk of a more subjective and less uniform application of the State aid rules. It is therefore very important that the application of the revised GBER is constantly being evaluated. A more subjective and less uniform application of the State aid rules in the different Member States linked to increased decentralisaton, leads to legal uncertainty and transfers all the risk to companies as they cannot rely on good faith if the granting authority has failed to apply the rules correctly. In such cases, aid risks being defined as illegal, with beneficiaries required to repay aid with interest or a competitor might file a complaint at a national court claiming that unlawful aid has been granted.

There are important compliance gaps, especially when it comes to block-exempted measures that are directly implemented at national level. Consequently, it is very important to further increase State aid discipline and raise awareness and share knowledge of the State aid rules at national level to help Member States and companies interpret the rules. This will minimise the risk for companies The platform e-State Aid Wiki could play a more important role in this respect, and we suggest that the questions and answers (cleansed of any confidential information) from this platform are published on the Commission’s website so that they are accessible to the public.

Other parts of the existing framework are also relevant and should be properly evaluated such as matters related to the recovery of illegal aid, national enforcement, private enforcement, and the lack of clear procedural rules to be followed by the Commission in relation to disputes about new or existing aid. The Commission should evaluate the enforcement of State aid rules at national level and focus especially on how private enforcement, involving national courts, could be encouraged.

The Commission’s proposed changes to the GBER are based largely on its own decision-making practice. To the extent that this relates to aid that the Commission would have approved anyway following a request by a Member State, extending the GBER does not necessarily mean that more aid will be granted. Instead, it will reduce administrative burdens for authorities and for companies that have been granted support. This is highly welcome because notification processes are generally lengthy and place considerable demands on companies to produce and submit a variety of information.

At the same time, as set out above, this must be balanced against companies having to take greater responsibility for assessing whether national authorities have correctly interpretated the GBER applications.

Transparency

It is important that information about granted State aid is accurate, complete and relevant. The current separate requirements of supplying the Commission with information on State aid being granted, ensuring transparency of large aid decisions and aggregated State aid expenditures, should be coordinated to reduce administrative burdens for businesses and public authorities.

The proposed Article 9 of the revised GBER, reduces the limit when transparency requirements apply from EUR 500.000 to EUR 100.000. This will significantly increase the number of aid decisions where applicants will be required to submit relevant information to the publicly accessible database provided by the Commission, within six months from the date of the decision. This will in turn increase companies' administrative burdens. In addition, most of this information would also have to be sent to national authorities which are reviewing submissions, creating an additional burden for those authorities as well, especially those that deal with large numbers of aid requests and that have not yet put in place automated procedures for submitting such information.

As mentioned, BusinessEurope supports increased transparency and opportunities to review aid granted within the EU on an individual basis. It is important that there is updated information about all granted State aid measures (including related individual aid decisions and aid spending) to resolve fragmenting information in different databases and making it easy to use the information. However, currently, a solid overall knowledge base that describes aid granted and paid out in the EU does not exist and the Commission's database has not been very user-friendly. BusinessEurope therefore suggests that the Commission evaluates the current transparency rules and database in terms of design, data uploaded, and use of the database, and establishes a uniform system where legal documentation, such as Commission decisions, aid granted and paid, can be accessed in one place for all aid granted and all aid schemes.

Specific Comments

As set out above, BusinessEurope welcomes the expansion of the GBER to new categories to support the deployment of innovative renewable and low carbon energy solutions and Carbon Capture, Utilisation and Storage (CCUS). Leveraging these technologies will allow expediting the transition to renewable energy and decarbonized products, the adoption of circular economy approaches, and the reduction of GHG emissions, while at the same time maximizing the efficiency of the related processes and capturing residual emissions. It is important that the definitions and specific provisions of the GBER are aligned to the maximum extent possible with those already included in EU primary legislation, the 'Fit for 55 Package', and the new Climate, Energy, and Environmental Aid Guidelines to ensure consistency between the different rules and put in place a coherent regulatory framework to support relevant investments.

As regards *<u>investment aid for testing and experimentation infrastructure</u>* (proposed new Article 26a), BusinessEurope in principle welcomes the introduction of this new aid category but it should – as in the draft of the current framework for State aid for Research, Development and Innovation – include technology infrastructure. Testing and experimentation infrastructures (also referred to as technology infrastructures), in contrast to research infrastructures, are to be used primarily for economic activities and specifically for the provision of services to businesses and can be of great importance for the realisation of implementation projects that are essential for the achievement of the twin transition.

However, non-discriminatory access is unrealistic for such infrastructures. For companies that are currently in the phase of a production transition or the construction of pilot plants, open use is not feasible – especially in view of an aid intensity of 25%.

The new aid category in the current draft version is thus unattractive for companies and not suitable for ambitious implementation projects (“upscaling”) in the corporate group. Instead, it is likely that the new aid category in the current draft version will only be of use to research institutions (in addition to the aid category for research infrastructures).

BusinessEurope suggests providing for a differentiation of aid intensities depending on the use of the testing and experimentation infrastructure. If only one user uses the infrastructure, aid intensity may not exceed 25% and if several users have access, aid intensity may not exceed 50%. In addition, personnel costs incurred should also be included as eligible costs.

Where it regards *investment aid for the acquisition/retrofitting of clean vehicles or zero-emission vehicles* (proposed new Article 36b GBER), it is proposed that the aid intensity may reach up to 100% of eligible costs for zero-emission and 60% of eligible costs for clean vehicles, but under the condition that the aid is granted in a competitive bidding process.

BusinessEurope generally favours the use of competitive bidding processes. It ensures that the necessary amount of aid is kept to a minimum, making the aid more efficient, leading to less distortions of competition. While the use of bidding processes should be the baseline, it might however not always be appropriate. For instance, SMEs might be at a disadvantage, as the element of price weighs heavily in such a competitive bidding. SMEs generally have less own investment capital, and their bids might therefore be less attractive in a competitive bidding process. In addition, the compulsory character of the competitive bidding process leaves little flexibility for Member States to construct a national aid scheme in another way; this is problematic for example where it concerns schemes that are already in place. To make sure that also SMEs can be supported in their efforts to contribute to the twin transition and to prevent hick-ups in existing aid schemes, the addition of an alternative model should be considered where a bidding process is not mandatory. To account for the risk of competition distortions, the amount of eligible costs would therefore be reduced to for instance 50% of the eligible costs.

BusinessEurope thus suggests a more flexible system where Member States can choose between instruments: (i) high percentages of investment coverage with State aid (e.g. 100%), but awarded in a competitive bidding process, or (ii) lower percentages of investment coverage with State aid, but flexibility in awarding methods for Member States. Alternatively, a suitable transition periods should be considered to cater for Member States that are devising, or have already put in place, aid instruments that are not including a competitive bidding procedure, to avoid any delay or funding gaps due to the design and implementation of new aid instruments.

EU Taxonomy Regulation

The proposed revised GBER and the draft Climate, Energy and Environmental Aid Guidelines published in the summer contain references to the EU Taxonomy Regulation. It is mentioned that the Commission will pay particular attention to Art. 3 of the EU Taxonomy Regulation, i.e., substantial contribution and ‘do not significant harm’ criteria and minimum social safeguards, when weighting the positive effects of the aid against the negative effects on competition and trade. In addition, the Commission envisages taking into consideration “other comparable methodologies”.

At this stage, the added value of using the EU Taxonomy as a reference for State aid to define positive environmental benefits is highly questionable. The EU Taxonomy has the potential to become a relevant classification tool for projects and technologies that are high performers within the sectors that are covered. However, the taxonomy is still very much under development. Also, it is unsure to what extent criteria can be implemented for State aid purposes since they were developed to channel private investments.

The first set of technical screening criteria is still very new and there is no solid experience on their usability yet. Furthermore, these criteria will only become applicable as from 2022 and will be further complemented by technical screening criteria for environmental objectives 3-6 that may be adopted at the end of next year and become applicable as from 2023. Therefore, restricting the definition of positive environmental benefits to the EU taxonomy for State aid is premature and risks not reaching the intended effects (i.e., supporting the transition of the economy).

The taxonomy may, in principle, play a role in the context of public spending but only once the framework and the criteria are finalised and robust experience on their usability and impact on capital markets has been drawn.

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