The General block exemption Regulation
Consultation paper

The purpose of the present consultation is to invite both **Member States** and **stakeholders** to provide comments on the application of the **General block exemption Regulation ('GBER')**. Those comments will provide valuable input for the review of the GBER in 2013.

The Commission invites Member States and stakeholders to submit their comments to DG Competition by **12/09/2012**.

1. Introduction

State funding meeting the criteria of Article 107(1) TFEU constitutes State aid and requires notification to the Commission. However, according to Art 109 TFEU, the Council may determine categories of aid that are exempt from the mandatory notification procedure set out in Article 108(3) TFEU.

In application of Art 109 TFEU, the Council, by adopting Regulation (EC) No. 994/98[1] ('Enabling Regulation') enabled the Commission to declare compatible with the internal market and exempt from the notification procedure aid in the following categories: aid in favour of SMEs, R&D, environmental protection, employment and training, and regional aid.

On the basis of the Enabling Regulation, the Commission adopted the GBER[2], in force since 29 August 2008.

The GBER simplifies the procedures for aid granting authorities at national, regional or local level. It allows the granting of a range of measures with horizontal objectives considered to be in the common interest.

The total amount of state aid granted through block exempted measures was in 2010 12.6 billion EUR. The latest version of the state aid scoreboard (autumn 2011)[3] shows a continued increased use of block exemptions by Member States in terms of aggregate block exempted aid amounts.

On 8 May 2012, the Commission adopted a Communication[4] on a State aid modernisation package ('SAM'), which shall launch and frame the political debate on the modernisation of State aid control. The review of the GBER is an important element of SAM.

The Commission invites the other Institutions, Member States and stakeholders to provide input for the revision of the GBER. The GBER contains a variety of measures, many of which are also covered by specific guidelines or frameworks (regional, environmental, risk capital and R&D&I aid). In order to ensure coherence in the revision of the policy for each type of aid, dedicated separate questionnaires will be prepared for the main types of aid (regional aid, aid for R&D&I, environmental aid, risk capital), covering both exempted and non-exempted aid. By contrast, this questionnaire will focus on general questions relating to the GBER as such and on the categories of aid only covered by the GBER (e.g. training aid, SME aid for consultancy and participation in

[1] OJEC L 142/1 of 14.5.1998.
[2] OJEU L 214/3 of 9.8.2008.
[3] COM(2011) 848 final, http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html

[4] http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

fairs, SME investment aid, aid for female entrepreneurs and disabled workers) and not by specific guidelines or frameworks. Overlaps were thus avoided to the extent possible, but respondents are invited to cross-reference replies in the parallel questionnaires if appropriate.

2. How to contribute to the consultation

The other Institutions, Member States and stakeholders are invited to respond to the questionnaire. Replies can be submitted in all official EU languages. Given the possible delays in translating comments submitted in certain languages, translations of the replies in one of the Commission's working languages (English, French or German), would be welcome. In addition, any comments beyond the scope of the questionnaire will be welcome.

Certain questions are intended specifically for public authorities or certain stakeholders and respondents are, thus, not required to address every question. If you are not concerned by a particular question, please reply "not applicable".

The deadline for the replies is **12/09/2012**. Replies should be sent to the European Commission, DG COMP, State aid registry, 1049 Brussels, **"HT.3365"**, preferably via e-mail to Stateaidgreffe@ec.europa.eu.

The Commission services plan to make the replies to this questionnaire accessible on its website http://ec.europa.eu/competition/consultations/open.html.Therefore, if respondents do not wish their identity or parts of their responses to be divulged, this should be clearly indicated and a non-confidential version should be submitted at the same time. In the absence of any indication of confidential elements, DG COMP will assume that the response contains none and that it can be published in its entirety.

QUESTIONNAIRE

About You

Specific privacy statement: Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form.

For rules on data protection on the EUROPA website, please see: http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata

1.1. 01. Do you object to the disclosure of your identity?

Yes☐ **No x**

1.2. 02. Does any of the exceptions foreseen in Article 4 of Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[5] apply to your response? If so, please indicate clearly which parts should not be divulged, justify the need for such confidential treatment and provide also a non-confidential version of your response for publication on the Commission website.

Please provide your contact details below.

Name	Marcel Roy, Secretary General AECM
Organisation represented	AECM, European Association of Mutual Guarantee Societies
Main business activities	AECM members mainly provide credit default guarantees for SME loans.
Location (country)	Belgium (38 member organizations in 20 member states, Turkey, Montenegro and Russia), Rue Washington 40, 1050 Brussels
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NOTE: The sections on the GBER common provisions and specific provisions (sections D and E) follow the structure of the GBER itself. You are requested to follow the order of the questions, even though you are not required to reply to all questions. You can also submit additional information that you consider relevant and which does not fit any specific question.

[5] OJ L 145, 31 May 2001, p. 43.

SECTION A: GENERAL GBER POLICY QUESTIONS

A.1. The GBER in context of the Enabling Regulation and the Guidelines

<u>Questions aiming at all respondents:</u>

1. What are the main difficulties you have encountered in applying individual aid measures on the basis of a scheme which is block exempted?

   The time consuming notification procedures for new programmes (or corresponding aid calculation methods) act as a deterrent to product innovation, since it can take close to one year between an initial idea and the launch of the program. Starting with autumn 2008, the financial market volatility is the norm. The financing needs of target SMEs and the motivations of some partner banks may shift dramatically in one year time. Thus the planned stimuli may become less than optimal by the time of the actual implementation of an approved programme.

   Additional monitoring requirements are generally a significant disincentive for the partner banks (additional costs), especially for relatively small transactions (retail products) where SME financing market failure is widespread. Formal simplifications and a greater flexibility should allow for the adaptation of support instruments (including monitored data) to the existing banking practices (credit cum guarantee procedures) in each of the Member States.

   There is no correlation between GBER/State aid regulations and banking regulations regarding SME financing. The motivations of financial partners (lender, guarantor, counter-guarantor) involved in the preparation and implementation of a new program (e.g. guarantee scheme for SME investment loans) are misaligned: according to the guarantee notice, the guarantor may issue an individual guarantee of up to Euro 2.5 mio. under a simplified SME credit guarantee scheme; but the De minimis regulation allows guarantees up to Euro 1.5 mio; and according to the CRD, banks are motivated to develop a simplified scheme for individual loans of up to Euro 1 mio. (as a SME retail product). Especially for innovative SME funding, such misalignments may result in needless limitations in drafting new programmes (in addition to the usual, unavoidable, program specific constrains), or in excessive transaction duration/costs for the entrepreneur.

   There is a general lack of SME credit market statistics to properly measure externalities. The EU-wide SME definition (2003/361/CE) is not incorporated into financial market regulations, where appropriate. As a consequence, the banks make use of various, narrow "SME" definitions in their client segmentation, both for retail and corporate loans. The SME A2F surveys and banking market statistics for loans of up to Euro 1 mio. (or equivalent) are very useful, but an imperfect substitute for proper SME financing statistics.

A.2. The GBER's impact on state aid policy

<u>Questions aiming at public authorities:</u>

2. Can you provide examples how the design of support measures (schemes) has been influenced by the GBER as compared to similar measures introduced under previous rules (for example, with regard to thresholds of measures, assessment of incentive effect)?

3. Has the entry into force of the GBER brought about a necessity to modify the scrutiny of aid applications

   Yes☐ No☐

   If yes, can you quantify and substantiate the modifications?

<u>Questions aiming at all respondents:</u>

4. Based on your experience with designing aid measures, do you consider that the measures allowed under the current GBER better target market failures and / or equity objectives than previous block exemption rules?

   Yes ☐ NoX

   If yes, please substantiate and give concrete examples.

   During the last years and the adoption of the currently valid State aid regulations (Guarantee notice, GBER, De Minimis, etc.) the reality for guarantee institutions has become rather more complex and made it more difficult to focus on market failures. Guarantees in general have been "branded" as being intransparent which has lead to a far higher degree of complication of e.g. the De minimis Regulation or the Guarantee notice.

5. Please describe what you consider from your perspective as the main positive economic effects of support granted for companies under the current GBER.

   The GBER is applicable for different types of financial instruments. These instruments are able to facilitate efficiently access to finance for a broad range of projects and beneficiaries. One particular advantage in contrast to the De Minimis Regulation is that the aid intensity is only focused punctually on the investment proposal and does not contain a 3-year aid threshold that can be very limiting for beneficiary SMEs. Thus, contrary to De Minimis, other meaningful projects can be supported subsequently.

A.3. Negative effects of block exempted state aid

<u>Questions aiming at all respondents:</u>

6. What are the main potential negative effects of block exempted State aid in context of distortions of competition and effects on trade? Please substantiate and give concrete examples.

   There are no potential negative effects in the area of support programmes for the SME access to finance. They are only partially compensating for a considerable systemic market failure and contribute to an actual increase in competition and trade. SME credit guarantee schemes are non-discriminatory.

7. Do you consider that the application of the GBER or some of its provisions have led, in practice, to affected trading conditions to an extent which is contrary to the common interest ?

   Yes☐ **<u>No X</u>**

   For the purposes of your reply, please consider in particular the following circumstances: market proximity of the supported activity; amount of aid; size of the beneficiary; market power of the beneficiary; level of positive externalities; definition of the relevant geographic and product market; competitive structure of the market concerned (number of competitors; barriers to entry; existence of market power). Please substantiate your view with concrete examples and data.

8. Which of the block exempted aid categories would you consider to have a high risk of affecting trading conditions to an extent contrary to the common interest? In view of your experience in block-exempted aid schemes, do you consider that large, in terms of overall budget, state aid schemes do generally have a higher potential for distortion? Please substantiate and give concrete examples.

   In the area of SME financing/support, large state aid/de minimis schemes have a lower potential for distortion than smaller ones, provided that fair access (non-discrimination) requirements are built-in. (This is the normal situation for SME credit guarantee schemes.) An ample enough SME scheme/program allows for simpler eligibility criteria, better geographical coverage, and sufficient duration, resulting in fairer access conditions for all the targeted and interested SMEs.

9. Do you consider that the safeguards in place in the GBER offer sufficient guarantees in order to avoid that trading conditions are affected to an extent contrary to the common interest?

   Yes. However, as indicated at point 1, shorter and simplified, flexible procedures may result in more efficient support for SMEs investments and better use of trade opportunities. Moreover, a clearly stated priority/recommendation for leveraged (SME counter-guarantees) and/or revolving (equity and quasi-equity, mezzanine, SME credit guarantee funds) schemes, whenever possible, may be helpful for the efficient use of public funds in the common interest.

SECTION B: THE USE OF THE GBER

B.1. Rationale and assessment of policies under GBER

Questions aiming at public authorities:

10. To what extent has the GBER been used for sectoral measures? In which sectors did you mainly apply measures covered by the GBER?

11. Do EU programmes for funding influence your Member State's strategy for block exempted aid?

   Yes☐ No☐

   If so, could you specify which programmes and in which way?

Questions aiming at all respondents

12. How important is the level of private co-funding for block exempted aid measures in your Member State? Does private participation often exceed minimum intensities specified in the GBER? What changes in the level of private funding have you noted over recent years?

   General Comments: Many of AECM's member organizations are private sector organizations (mutual or otherwise privately funded) that usually benefit from a public counterguarantee. Important private sector schemes can be found among others in Italy, Germany, France and

Spain. Other AECM member organizations are public institutions or mixed PPPs (e.g. Portugal).

The extent of the public counterguarantee can be variable from organization to organization and depending on the product concerned. As a rule, in accordance with the provisions of EU state aid rules, the coverage does not exceed 80% but on average may be lower in practice. Private funding for private guarantee funds has remained stable over recent years. During the crisis period of 2008-2010, many AECM members have participated in anti-crisis measures using the Temporary State Aid framework with higher guarantee thresholds (up to 90%).

The private participation in block exempted aid measures has to be looked at very carefully. The magnitude of such private funding is very variable from Member state to Member state, depending on economic, social, cultural and other factors. In the context of the crisis, the availability of such funding will be more and more compromised. We consider that there are already far-reaching requirements on private participation via the definition of the aid intensities, more flexibility is needed instead.

Romanian Member Organization (FNGCIMM): FNGCIMM operates as SME credit guarantee scheme with coverage (guarantee rate) of up to 80% of the SME loan amount. The average guarantee rate was about 50% for the whole SME guarantee portfolio, without significant changes from one year to another. (As of December 2011, there were about 11,500 SME guarantees outstanding.)

Starting in 2008, private bank funding for SMEs has become much more restrictive, especially for new clients and small businesses, and with shorter maturities. The increased restrictiveness of the bank credit procedures, and the decrease in market value for SME property, had resulted in a 3.5 times increase of the demand for SME guarantees in 2009 (over 7,000 SME guarantees granted, from about 2,000 in 2008). This trend continues to date. (In 2011, FNGCIMM has issued close to 10,000 SME guarantees).

B.2. Statistical data

Questions aiming at public authorities:

13. Can you provide a comparative estimate of the magnitude of the total amount of aid spent under the GBER for 2010 in relation to the total amount of aid spent under *de minimis* rules (excluding aid measures between 200,000 and 500,000 € which temporarily were considered to constitute compatible aid under the Temporary Framework[6])?

14. Could you indicate the aggregate amount of block exempted aid under the GBER (in million EUR) granted by your authorities (local/regional/Member State) between 29 August 2008 and 31 December 2011, on a yearly basis. Please indicate the breakdown of this aggregate block exempted aid for approved aid scheme or for individual aid. Please provide, if possible, a breakdown of aggregate block exempted aid granted to large undertakings and to SMEs.

15. Please indicate which aid forms were most used for block exemptions: grants, interest rate subsidies, loans, repayable advances, guarantee schemes, fiscal measures, other and provide policy reasons for the preferences.

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[6] The *de minimis* threshold amounts to 200.000 € per undertaking over three years. See Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid

16. Please provide a ranking of aid categories (aid objectives, e.g. Art 13.1, 14, 15 etc. of the GBER) most used within your Member State or region (please quantify the number of measures and aggregate aid amounts) and provide policy reasons for the preferences.

17. Do particular factors prevent your authorities from granting a larger proportion of aid through block exempted measures?

Yes☐ No☐

If so, please specify and give concrete examples.

B.3. The GBER and the crisis

Questions aiming at all respondents:

18. To what extent has the economic and financial crisis had an impact on the granting of block exempted state aid in your Member State?

AECM member organizations made an important contribution to fight the effects of the financial and economic crisis since 2008. The impact of the specific crisis instruments, which have been launched by AECM member organisations towards the end of 2008 and the beginning of 2009, in form of new products or modified existing products has been considerable:

*With a total volume of **€ 11,2 billion**, guarantees issued under the specific crisis programmes make up about a third of the total guarantee activity in 2009. 67 % of the total volume of these specific crisis guarantees has been dedicated to short term, working capital loans.*

Keeping in mind that short term working capital guarantees had hardly been offered before the crisis as a stand-alone product, the massive demand shows the need to fill a crisis-related market gap.

*The specific crisis guarantee instruments have provided **over 120.000 SMEs** with crucial access to finance and thus contributed to maintaining **more than 851.000 jobs***

Many AECM member organizations used the Temporary State Aid Framework as well as the De Minimis Regulation and GBER to manage these anti-crisis measures. For more details, please refer to the AECM Brochure on the anti-crisis measures:
http://www.aecm.be/en/guarantees-and-the-recovery-the-impact-of-anti-crisis-guarantee-measures.html?IDC=31&IDD=182

Romanian Member Organization (FNGCIMM): The economic and financial crisis has caused a worsening of the SME access to finance. As one of the first anti-crisis measures, the Government of Romania has decided the establishment of the Romanian Counter-guarantee Fund. The SME counter-guarantee (de minimis) schemes are available to all the Romanian credit guarantee funds since May 2010.

In September 2011, the "Mihail Kogalniceanu Programme for SME financing" was launched targeting about 28,000 small businesses in the period 2011-2013, with short-term bank loans of up to Lei 125,000 (~€27,800), with partially subsidised interest and, if necessary, partial state guarantees.

If applicable, can you describe such impact and indicate if, and how, your authorities have adapted their State aid granting policy in response?

Romanian Member Organization (FNGCIMM): A significantly increased use of guarantee instruments in several Governmental support programmes, due to their leverage feature and efficiency (maximum number of beneficiaries, and of private funding attracted for any given amount of allocated public funds), fast implementation through the existing financial institutions (including the FNGCIMM), and at minimum cost for the current public budget.

Czech Member organization (CMZRB): There was an increased offer of guarantees and loans supported from structural funds and national funds. However, the GBER was not the best framework for this purpose, the de minimis regime was used in majority of deals

19. Do you consider that the GBER is a useful instrument to ensure funding for SMEs? If so, which aid measures are most useful?

The GBER is a regime which is more suitable for comparatively bigger investment projects. In any case, all measures which will allow allocating more bank loans to SMEs are welcome.

As mentioned above, the SME counter-guarantee schemes are the most efficient, due to their large number of beneficiaries, maximum leverage, fast implementation through the existing specialist financial institutions (SME credit guarantee funds), and optimum involvement of the private lenders (private funding, distribution networks, financial market practices).

For AECM members, the Regional aid, Risk capital aid and aid for Research, Development & Innovation are all relevant.

SECTION C: EFFECTIVENESS AND EVALUATION OF BLOCK EXEMPTED AID

Questions aiming at public authorities:

20. How do you evaluate the effectiveness of block exempted aid granted in your Member State in relation to the objectives pursued by the measures in question? Do you carry out evaluation analysis of individual measures and/or programmes? Please substantiate your answer.

Questions aiming at all respondents:

21. Please make available any relevant studies or reports that describe the effectiveness of block exempted aid in your country.

While we do not dispose of specific studies on the effectiveness of GBER measures, we refer to the study by the University of Trier, Germany on the Macroeconomic added-value of guarantees:http://www.aecm.be/en/inmit-study-on-the-macroeconomic-benefits-of-the-german-guarantee-banks.html?IDC=31&IDD=183

Romanian Member Organization (FNGCIMM): The most recent study regarding the SME support programs ("The Current Situation of the Romanian SMEs – 2012") was published in *early June 2012 by the (Romanian) Post-Privatization Foundation. It is available (in Romanian) at www.postprivatizare.ro/english/publications/studies/ .*

22. According to your experience, which are the most appropriate types of State aid instruments to be block exempted (e.g. grants, interest rate subsidies, loans, repayable advances, guarantee schemes, fiscal measures)? Please substantiate your answer.

    Guarantees and loans have a less damaging influence on fair market competition than grants. This advantage should be recognized by the GBER by reducing administrative burden for users of these financial instruments as much as possible. We suggest introducing a new state aid category for loan guarantees, which would allow to take into consideration their specificities (see answer to question 23).

    AECM underlines the usefulness of counterguarantees and/or equity/quasi-equity contributions to the capitalization of existing SME credit guarantee funds and/or (partial) counter-guarantees. (See also the answers at points 8 and 19).

SECTION D: THE GBER – COMMON PROVISIONS

D.1. Scope of block exempted aid (Article 1)

Questions aiming at all respondents:

23. Based on your experience with designing aid measures, do you consider the current scope of measures covered by the GBER to have been appropriately framed?

    Yes☐ **No X**

    If not, please explain what difficulties you have encountered.

    - *Characteristics of the loan guarantee transactions are significantly different from other investment projects. In the same way, the state aid element of guarantees differs from that of grants. Therefore we recommend the creation of a new state aid category of the GBER for loan guarantees where the specialties of loan guarantee could be taken into account in the determination of the calculation method and the maximum amount of state aid.*

    - *The GBER should cover all transparent Aid measures up to a certain thresholds, differentiated according to the types of promotional instruments.*

      Currently, there are no exemptions for e.g. broadband, audiovisual works, arts and culture or parts of the transport sector (measures for the substitution of road transport by more environmentally friendly transport vectors, multimodal goods transport systems, etc).

    - *The definition for SME investment and employment aid excludes the working capital component usually required in association with an SME investment project. Again, we see this is a misalignment between the State aid regulations and banking practice. There is a great demand from companies for working capital, and this is even more so the case in economically difficult times. Even in a „normal" economic climate, an SME* *investment loan (e.g. for real estate or machinery), provided by a partner bank and subject to support from a SME credit guarantee scheme, usually involves a reasonable, proportionate, additional amount of working capital. For instance, all investments defined in Art. 12 of the GBER (setting up of a new establishment, extension of an existing establishment, diversification and modification of production processes, etc.), but also other types of SME support measures taken up in the GBER, are usually characterized by a higher demand for working capital.*

Without this working capital, the investment cannot be undertaken. Furthermore, in the context of a high labour division, it can be more advantageous for a company to rely on an external provider for his product idea. As a result, there is a higher prefinancing need, which cannot be eligible under the current GBER. We therefore suggest to include working capital (alone or as a proportional part of a financing program comprising investments) in the list of eligible expenditures for regional State aid, and furthermore for all state aid categories regarding SMEs.

See also answer to question 1.

D.2. Definitions (Article 2)

Questions aiming at all respondents:

24. Based on your experience with the application of the GBER, are there any definitions (of e.g. ad hoc aid, tangible assets) in need of further clarifications or change? Please describe any particular difficulties you have encountered in applying specific definitions.

    The ban to support enterprises in difficulties and very complicated definition related to this topic is an administrative complication. In practice, standard financial instruments will not be used for this purpose because the risk management systems applied in financial institutions do not allow financing of too risky projects.

D.3. Transparency of aid (Article 5)

25. Is the current distinction between transparent and non-transparent aid adequate?

    Yes X No☐

    Please describe any difficulties you have encountered.

26. In particular, do you consider that Articles 5(1)(d) and 25 address well the specificity of fiscal measures?

    Yes☐ No☐

Please explain and describe the main difficulties you have encountered.

D.4. Cumulation (Article 7)

Questions aiming at all respondents:

27. Based on your experience with designing aid measures, are the provisions on cumulation appropriately designed?

Yes☐ **No X**

What are the difficulties you have encountered?

In general, for standardized/simplified SME credit guarantee schemes, eligible for counter-guarantee schemes with state aid element and with microenterprises as main beneficiaries, we do not consider the cumulation rule as necessary, given that the size of the transaction and the aid component are too small for the disproportionately high administrative cost and burden in terms of IT programming and data storage for the bank, the guarantor and the counter-guarantor.

The cumulation of state aid, which is aimed at the recipient company as a whole (promotion for companies that cannot necessarily be defined in single eligible cost categories, e.g. in case of risk capital or aid for young innovative entrepreneurs), with aid for defined eligible costs (promotion through projects) is difficult in practice. Due to the different approaches in financing, there should be no cumulation requirement for promotional measures aimed at SMEs that cannot be divided into single eligible cost categories.

In the case of risk capital, the state aid element is relatively small due to the restrictive requirements of Art. 29 of the GBER (profit driven investments, high participation level of private investors). On the other hand, there are disproportionate restrictions for other SME support measures in terms of cumulation (reduction by up to 50%, with the exception of R&I). From an administrative point of view, it can already result as very difficult to identify risk capital measures that are relevant from a state aid perspective (e.g. for tax support measures in favour of a fund, the Commission also suggests a state aid element in favour of the target companies). The reduced support for the 3 years after the first risk capital investment is difficult to communicate. In addition, there are slightly different cumulation requirements for notified risk capital measures.

For the cumulation of promotion through projects (overlapping eligible costs), the principle should be accepted that for overlapping costs, there should be the more advantageous upper threshold (Art. 7 (3) GBER). This would be analogous to the current guidelines / EU framework.

D.5. Incentive effect (Article 8)

Questions aiming at public authorities:

28. How do the authorities in your country verify the existence of the incentive effect for SMEs?

29. How do the authorities in your country verify the existence of the incentive effect for large undertakings? Do you typically make enquiries into the counterfactual (i.e. check what the firm concerned would do in the absence of aid)? Please provide examples.

30. Do you measure the effect of additional public spending in leveraging private expenditure? If so, how do you do that and what are the results?

Czech Member organization (CMZRB): The respective data related to the usage of structural funds are provided in reports submitted to the Commission.

31. Based on your experience in designing aid measures, do you consider that Article 8(4) addresses well the specificity of fiscal measures? Please describe any difficulties you have encountered.

Yes☐ No☐

Please explain.

<u>Questions aiming at all respondents:</u>

32. In your experience with the application of the formal requirements set out in Article 8, including the distinction between SMEs and large undertakings, have these requirements adequately ensured that the aid is necessary to carry out the project in a given location or to carry out a project of given size /scope /total amount spent/ speed?

Yes☐ **<u>No X</u>**

If not, please explain why. Please describe the main difficulties you have encountered.

Article 8 of the common provisions states as a condition that there has to be an incentive effect for aid to be exempted under the GBER. For the SME this means that it has to have introduced the application towards its respective Member State authorities before the beginning of its project or activities.

We view the Principle „application before work on the project or start of the activities"appropriate and tested in practice. However in single cases, the interpretation of the specific terminology with a view of establishing the start of activities becomes difficult (paragraphs 2 and 3). In our view, there should be a this should be a pragmatic solution for SMEs, possibly in this Article or in one of the Recitals, that gives more precision to this concept, since the moment of the beginning of a project can be unclear.

To avoid a discussion about the point of time at which firm orders, preparatory measures, subdivided projects etc. are to be relevant for the start of activities, the criteria should be limited to the moment of invoicing a payment of the concretely definable eligible costs after the application. In our perception, this would not lead to a loss of quality in terms of control.

We also suggest applying the principle of „ application before work on the project or start of the activities "for larger companies within the boundaries of the thresholds foreseen by the GBER. Currently, there is a need for a contra-factual analysis (implementation with/without state aid), which has to take into consideration a great number of management decisions (e.g. parallel projects, necessary replacement investments or the utilization of profits as stated by the shareholders), for which there are no harmonized evaluation criteria. The detailed analysis of the macroeconomic effects of the project is disproportionate for the purpose of determining the exemption of state aid. We therefore suggest eliminating formal exemption requirements such as proof of a contra-factual analysis.

33. In particular, have you encountered difficulties in applying Article 8(4) in relation to fiscal measures?

Yes☐ No☐

Please describe any difficulties you have encountered.

D.6. Formal requirements (Articles 9 - 11)

34. Have you encountered difficulties in applying the provisions on transparency, monitoring and annual reporting? Please explain.

    Yes X No □

    Annual reporting should be focused on the approval of the aid, rather than primarily on the paid out support as is the case with the current GBER. This would improve the overall data quality, since the data used for the annual reports, e.g. the gross grant equivalent, is usually established on the basis of the full amount at the moment of the approval of the project, and not on the basis of (partial) payments.

    This principle is already applicable for the extended reporting requirements under the R&I Framework (see European Commission form for detailed information).

35. In particular, is the obligation of the Member State to publish on the internet the full text of the aid scheme sufficient (Article 9(2))?

    Yes □ No □

   Please explain.

D.7. Specific conditions applicable to investment aid (Article 12)

36. Have you encountered difficulties in applying the conditions applicable to investment aid?

    Yes X No□

    Please describe the main difficulties you have encountered.

    The definition of eligible costs for investment aid, Art 12 (1) a) GBER, should be formulated in a way:

    - *that better reflects investment reality,*
    - *that takes into consideration the service sector and*
    - *that should not necessarily focus on the whole establishment.*

    Ideally, all investment goods that can be amortized should be eligible, as long as they are not replacement investments.

    Regarding the eligibility of working capital for SMEs, see answer to question 23.

    The specific provisions for business succession by family members / employees for small companies under Art 12 (1) b) GBER should be extended to medium-sized companies since there is a comparable promotional need.

    Art 12 GBER treats asset deals (acquisition of capital assets) and share deals (acquisition of company shares) differently, however, it remains unclear to what extent share deals are to be considered as eligible investment (the sole acquisition of shares is not considered as an *investment under Art. 12). This is a problem in the context of a growing number of business transfers, due to the generational change in mature economies, and which have to be addressed with adequate financial solutions. As both deal types are widely used in practice and come to the same result in economic terms, we do not see the justification for such a scope exclusion and suggest a modification admitting share deals under the GBER, especially in the case of company transfers (change of ownership), to be treated on an equal footing with asset deals.*

SECTION E: GBER – SPECIFIC PROVISIONS

Please note that the types of aid which are covered by the current GBER but not mentioned in the present section (i.e. regional, environmental and R&D&I aid, risk capital) are subject to a separate questionnaire and review. The questionnaires for regional aid and aid R&D&I have already been published[7].

Questions aiming at all respondents:

E.1. SME investment and employment aid (Article 15)

37. Have you encountered difficulties in applying Article 15(2) concerning aid intensity?

    Yes X No☐

    If you have encountered difficulties with the application of this provision, please explain.

    See comments under other sections.

38. Have you encountered difficulties in applying Article 15(3) and (4) concerning the eligible costs?

    Yes X No☐

    If you have encountered difficulties with these provisions, please explain.

E.2. Aid for small enterprises newly created by female entrepreneurs (Article 16)

Questions aiming at public authorities:

39. Have you granted any aid under this provision?

    Yes☐ No☐

If yes, please provide examples.

40. Have you encountered difficulties in applying this condition?

    Yes☐ No☐

If yes, please provide examples.

[7] http://ec.europa.eu/competition/consultations/open.html

Questions aiming at all respondents:

41. Have you encountered difficulties in applying Article 16(3) on aid amounts?

    Yes□ No□

    If you have encountered difficulties with this provision, please explain.

42. Have you encountered difficulties in applying Article 16(4) on aid intensity?

    Yes□ No□

    If you have encountered difficulties with this provision, please explain.

43. Have you encountered difficulties in applying Article 16(5) concerning the eligible costs?

    Yes□ No□

    If you have encountered difficulties with this provision, please explain.

Questions aiming at all respondents:

E.3. Aid for consultancy in favour of SMEs and SME participation in fairs (Articles 26-27)

44. Have you encountered difficulties in applying Articles 26(2) and 27(2) on aid intensities?

    Yes□ No□

    If you have encountered difficulties with these provisions, please explain.

    There are no problems, but in the interest of simplification, types of measures for which the same aid intensity/threshold is applicable and which are aimed at the same target group (SMEs) should be regrouped.

45. Have you encountered difficulties in applying Articles 26(3) and 27(3) concerning the eligible costs?

    Yes□ No□

    If you have encountered difficulties with these provisions, please explain.

E.4. Training Aid (Articles 38-39)

46. What is your experience with the application of Article 38 GBER and in particular its definitions? ? Please explain any difficulties you have encountered.

47. Have you encountered difficulties in applying Article 39(2) on aid intensities?

    Yes□ No□

    If you have encountered difficulties with this provision, please explain.

48. Have you encountered difficulties in applying Article 39(4) concerning the eligible costs?

Yes☐ No☐

If you have encountered difficulties with this provision, please explain.

E.5. Aid for disadvantaged and disabled workers (Articles 40-42)

49. Have you encountered difficulties in applying Articles 40(2) and 41(2) on aid intensities?

Yes☐ No☐

If you have encountered difficulties with these provisions, please explain.

50. Have you encountered difficulties in applying Articles 40(3) and 41(3) concerning eligible costs?

Yes☐ No☐

If you have encountered difficulties with these provisions, please explain.

SECTION F: MISCELLANEA

Questions aiming at all respondents:

51. Do you have any other comments on the application of the GBER on issues other than those covered in the previous questions?

General comments: *The competitive level playing field that Art 107 of the Treaty of the Functioning of the European Unionaims at, and the exclusion of inadmissible state aid in this respect, are not put at risk, if the recipient of state aid is so small that he cannot distort competition in the Internal Market. Thus, it is the general perception, that micro companies (as defined by the definition of Small Companies, GBER → Companies employing less than 10 people and with an annual turnover and/or balance sheet total of no more than € 2 million) do not distort competition in the Internal Market.*

Due to the relative size of these companies as well as their regionally restricted radius of activity, we hardly see a negative effect for companies established in other Member States. In this respect, we suggest that micro companies benefit from a general exemption from state aid regulation. For these companies, there would be no need for a threshold amount, given that the micro company size alone would limit the aid the business could receive. The exemption of these beneficiary companies from any state aid rules and administrative requirements would lead to a significant simplification of the loan application process and thus facilitate the access to finance of micro businesses to finance, even potentially supporting a new boom in business start-ups.

Art 13 (6) – Regional Aid: *There is a requirement applied regarding a minimum level of a private co-financing (25%). It would make the system more flexible if only state aid intensity limits were applied. The market (banks) require equity to be invested in the project. An additional requirement imposed by the GBER only represents an artificial administrative burden.*

Art 29 (6) – Risk capital: *This kind of aid, that can be implemented beside guarantee schemes to further improve access to finance for SMEs, presents requirements for private funding that* *may be hard to meet in some cases. Even in assisted areas it might be difficult, depending on the local economic background, to gather the required 30% of private funding to set up such an investment fund. It is therefore our view that these thresholds should be lowered, or lifted provided sufficient evidence of private investment default can be established. Beside, some management conditions could be reviewed.*

52. Please provide copies of any documents or studies which may be relevant for assessing the application of the GBER and contributing to the reflection on its future revision.

Annexes:

- *AECM position paper on the review of State Aid legislation*
- *AECM brochure on anti-crisis measures*

Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

Yes X No☐

THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE.