**AECM Position regarding the**
**European Commission's review process for EU State Aid rules**

**Brussels, 7th May 2012**

In the context of the ongoing review of the EU State Aid by the European Commission, which has been initiated with the Consultation on Regional State Aid rules and will be followed by a number of other key legislative texts, the European Association of Mutual Guarantee Societies (AECM, see annex) is pleased to provide the Commission services with a number of proposals aimed at contributing in a constructive and proactive way, reflecting as much the view-point of the guarantee institutions as a financial intermediary as well as that of the SME customer as a final beneficiary.

## A/General Positions on State Aid Regulation Review

### More economic approach

The consequential orientation of the European Commission's State aid policy towards a more economic approach, in particular in its control of state aid, has lead to a greater efficiency of state aid and a higher degree of transparency of the granting and control processes related to subsidies.

### The great success of the „Temporary framework"

With its "Temporary Framework for State Aid", the European Commission has given a fast and effective response to the impact of the Financial crisis, which could be increasingly felt towards the end of 2008. This Framework was the answer to the uncertainties on financial markets and the impending risk of a more restrictive credit supply / "credit crunch" for loan finance for companies and SMEs in particular. The possibilities provided by the "Temporary Framework" for an increase of the ceiling for admissible state aid equivalent to be considered as non-distortive of competition within the Internal Market, as well as for a more generous promotion of SMEs through risk capital participations, have significantly softened the impact of the financial crisis in the EU Member States. In many cases, access to finance has either been improved, or even only been made possible at all, in these difficult times thanks to the additional financial instruments, that have been designed on the basis of these state aid rules. A more detailed description can be found in a separate AECM Brochure. Given those elements, and the fact that the crisis' effects can still be felt in many sectors, we believe that the temporary Framework should be further extended, or (at least partially) made permanent.

### Positive: Constructive dialogue with the European Commission

The dialogue between the Commission, the Member States and the Stakeholder Associations has proven to be particularly constructive, in particular during the turbulent phase of the crisis period. The constructive and non-bureaucratic cooperation between all parties have made an immediate and efficient support towards European SMEs possible.

### Monitoring effort

If the efficiency of supply and control of state aid pursued via the „more economic approach" is to be enhanced even further while reducing the administrative burden for promotional institutions, a simplification of the currently valid monitoring requirements should be envisaged. Given that this burden is also applied via many instruments and regulations on the loan recipient, there is a risk that the use of support instruments is disincentivized. In our view, this is not the intention of State Aid policy. Even for De minimis aid, a comprehensive assessment is necessary, due to the cumulation provisions under the GBER. For this reason, the use of the De minimis Regulation is prefered over the GBER in practice, which is not in the spirit of this SME-specific Regulation. AECM would suggest simplifications in this respect.

**Product innovation is hampered / Notification**
Due to the stringent rules and the often time consuming notification procedures for promotional programmes and / or corresponding calculation methods, we are worried about impediments to product innovation. Formal simplifications and a greater flexibility could lead to the necessary individual adaptation of promotional instruments to the different company-sizes, sectoral profiles and Member States.

**Impending challenges: Implementation of Basel III / CRD IV and the need for recapitalization of credit institutions**
Aside from the considerations directly linked to the situation of the potential beneficiary (company), the Commission should also increasingly include the economic environment and in particular the situation of the credit institutions as a factor when making up its mind about the optimization of EU State Aid rules. In particular, we underline the fact that Basel III can be expected to motivate credit institutions to be even more cautious in their lending activity, in particular towards SMEs. In addition to the current negative economic outlook and the sovereign debt crisis, these framework conditions can potentially harm the prospects of smaller companies. These challenges are similar to those experienced in the recent financial crisis and should be taken into consideration in the ongoing review of EU State Aid rules.

The implementation of the more restrictive Basel III rules, foreseen for beginning of 2013, are of direct concern not only to the financial industry, but also for the companies who are worried about a restriction of credit supply. The minimum own funds ratio will be raised and liquidity rules will be introduced for the first time, with the intention of reducing the crisis sensitivity of the financial sector. The stipulation of a maximum leverage ratio, independent of the risk content, can also be problematic, even if it is only to be implemented after a observation period ending in 2018. All these measure will constrain credit institutions to issue less loans for a given level of own funds. Consequently, promotional instruments will become even more important in the future.

## B/ Concrete Proposals

**Fundamental remarks:**
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.

**De-minimis Regulation:**
The De-minimis Regulation has shown its usefulness in practices due to the fact that support measures for companies provided by the State are not considered to be state aid relevant up to a threshold amount of € 200.000. By providing the possibility of using a threshold amount, as well as its equivalent guarantee amount, many smaller guarantee institutions have been able to use the Regulation without having to manage complex calculation models, which would be unaffordable for them. Therefore, clearly, such a threshold should be maintained in principle. The De-minimis Regulation has also proven to be very easy to apply in practice in the context of the Temporary State Aid Framework. Especially given the current economic situation, high unemployment, difficult access to loan finance, etc. in many Member States, this tool should be kept as simple as possible.

Nevertheless, these support measures have to be considered under cumulation rules, leading to the situation that, although considered as “non-aid” measures, de-minimis support measures are viewed in fine as state aid measures. Given the multitude of support measures provided by different promotional actors (EU, Federal State, Land etc.), this results in very complex cumulation assessments, requesting many information items from the credit beneficiary. Especially for the segment of very small loans, this results in a disproportionately high administrative cost and burden, among others in terms of IT programming, implementation and maintenance. The high degree of complexity of the assessment of the state aid equivalent is difficult to communicate towards the final beneficiary company and can have a dissuasive effect. While this enables a higher degree of transparency for the purpose of control of state aid, it is contradictory to the actual goal of the Commission to simplify state aid rules and to make them transparent to all. As a consequence, we suggest eliminating the cumulation requirement under the De minimis regulation for Small and medium-sized companies in the interest of a clear simplification and shorter decision processes.

Given that many promotional measures are based on the De-minimis Regulation (until now, the GBER can only be used for investment loans, excluding working capital components), the € 200.000 threshold (€ 7.500 for agricultural undertakings) is limitative on many occasions. For a greater room for manoeuvre for promotional activities, we suggest raising the threshold to € 500.000 (€ 15.000 in case of de minimis aid in the sector of agricultural production) over 3 years, as it was previously made possible under the temporary Framework. Alternatively, it could be considered to only raise this threshold for SMEs. In addition, it would be helpful to get clarification in the sense that measures admissible under the De-minimis Regulation are not considered as State Aid.

Article 3 of the De-Minimis Regulation regulates the monitoring of De-Minimis aid. Among others, it requires the aid recipient to issue a declaration regarding the aid amount. In the case of guarantees and counterguarantees, this often leads to a situation, where the guarantee is granted for a determined bank loan (e.g. where the issuance of the loan is linked to the presence of a guarantee), and where however the bank loan *in fine* is not granted. In this case, the aid in form of the guarantee is considered to have been granted, despite the fact that the beneficiary does not receive said aid equivalent, since the loan has not materialized and consequently the guarantee is not activated. To remedy this situation, we suggest that Article 3 of the De-Minimis Regulation is amended by including a rule stating that guarantees for bank loans and their respective declarations become nil and void, if the bank loan is not granted and the guarantee is not used. The Member State authorities should be enabled to cancel the declaration in this case to avoid an unjustified "usage" of the state aid equivalent admissible under De-Minimis.

There is a lack of clarity with regard to the application of the De-Minimis Regulation to Undertakings in Difficulties (UiD). In principle, the Recital (7) of the De-Minimis Regulation states that it is not applicable to undertakings in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty. However, it is unclear, how this interacts with the dispositions of the Guarantee Notice (2008/C 155/02). The Guarantee Notice also refers to the above mentioned Community guidelines, all the while stating that SMEs, that have been set up less than three years ago would not be considered as being UiD. The GBER in turn follows another approach when defining SMEs as UiD. In order to obtain a minimum of consistency, we suggest that Recital (7) of the De-Minimis Regulation be amended so as to clarify that SMEs are only to be considered as UiD, if the conditions stated in Article 1, Para. 7 of the GBER are fulfilled.

A number of different definitions for the transport sector are used in the De-Minimis Regulation. Thus, Recital (3) mentions the concepts of "transport sector", "road freight sector", "passengers transport sector", "freight transport and "road freight". For clarities sake, we suggest definitions for the different concepts.

**Regional Aid / GBER**

<u>Common provisions – Incentive effect</u>

Article 8 of the common provisions state 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. In our view, there should be a clarification, 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. A project should be considered to have started, if e.g. a real estate lease or an option for the purchase of a real estate good has been signed.

<u>SME State Aid</u>

There is a great demand for companies for working capital, and this is even more so the case in economically difficult times. Even in a „normal" economic climate, bank loans usually cover both investments and related working capital needs. For these financing projects, the inclusion of working capital as eligible costs under the GBER is of crucial importance. Any investment (e.g. real estate or machinery) requires additional working capital financing. 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.

Share-Deal / Asset-Deal
The financial challenges posed by the generational change in mature economies is a pressing problem. In the GBER, there is a difference in the treatment of the purchase of the assets of a company (asset deal) on one side and the purchase of the shares of a company (share deal) although both techniques are widely used in practice. While the asset deal is possible under the GBER (however SMEs are treated differently according to Article 12 para.1 lit. b), the share deal is excluded from the scope of the GBER. 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).

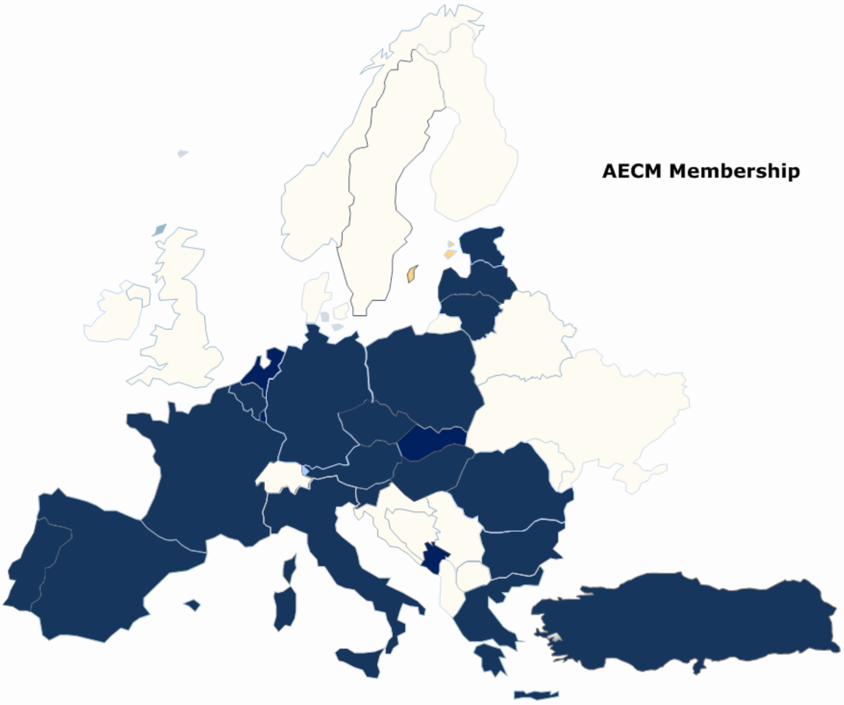
Aid in the form of Loan Guarantee
Characteristics of the loan guarantee transactions are significantly different from other investment projects. In the same way, state aid element of guarantees differs from grants. Therefore we recommend the creation of a new state aid category of the GBER for loan guarantees 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.

Aid in the form of 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.

Cumulation issue
As regards the cumulation issue, we refer to the above-mentioned comments under the section relating to De-minimis. We also suggest the elimination of the cumulation requirements in the case of the GBER (if needed by reintroducing the former lower aid intensities.

## Annex/ About AECM

AECM has 37 member organisations operating in 20 EU countries as well as Montenegro and Turkey. Its members are mutual, private sector guarantee schemes as well as public institutions, which are either guarantee funds or Development banks with a guarantee division. They all have in common the mission of providing loan guarantees for SME who have an economically sound project but cannot provide sufficient bankable collateral. In 2012, AECM member organizations had a total guarantee volume in portfolio of € 79,7 billion and issued a total of € 28 billion in new guarantees.




AECM represents the political interest of its member organisations both towards the European Institutions, such as the European Commission, the European Parliament and Council, as well as towards other, multilateral bodies, among which the European Investment Bank (EIB), the European Investment Fund (EIF), the Bank for International Settlement (BIS), the World Bank, etc. It deals primarily with issues related to state aid regulation relevant for guarantee schemes within the internal market, to European support programmes and to prudential supervision.

More information is available on the AECM web-site at: www.aecm.be