

AECM Position on Commission draft for Regional State Aid Guidelines – State Aid Modernization initiative – 2014 – 2020

Transparency Register n°: 67611102869-33

Brussels, 6th March 2013

AECM hereby submits its positions regarding the draft Guidelines for Regional State Aid, presented by the Commission for Consultation in the context of the general review of EU State Aid legislation under the "State Aid Modernization" initiative (SAM) 2014 – 2020.

General Comments

AECM (see annex) considers an adequate state aid framework for the new programming period to be of utmost importance. 4 years after the start of the Financial and Economic crisis in 2008, followed by the current and related Sovereign Debt crisis, European companies find themselves at a cross-road. Access to finance continues to represent a major problem for business, more so in the EU Member States hit by austerity measures. Companies see themselves confronted both with markets that are shrinking for many products and the need for investments for the modernization of production facilities, renewable energy sources, etc. aimed at increasing their competitiveness on markets within and outside the EU.

At the same time, banks are remodeling their loan portfolios in response to the new Basel III requirements, potentially motivating credit institutions to be even more cautious in their lending activity, in particular towards SMEs.

These framework conditions can potentially harm the prospects of smaller companies and consequently promotional instruments such as guarantees will become even more important in the future. These challenges are similar to those experienced at the outset of financial crisis in 2008 and need to be taken into consideration in the ongoing review of EU State Aid rules.

Generally speaking, AECM is of the opinion that the competitive level playing field that Art 107 of the Treaty of the Functioning of the European Union aims 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 (very onerous and disproportionate for the great number of very small operations) 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.

AECM globally welcomes the draft guidelines, as we consider them to provide a clear regulatory framework for Regional State Aid for the new programming period. In general, the new provisions are to be seen as enhancing simplification and efficiency for the financial intermediaries and hence for the financial beneficiaries as well.

We note that no formal proposal for the GBER has been published at this point. It will be of utmost importance for the GBER to contain much more simplified requirements as compared to the Regional Aid Guidelines. It should be avoided to transfer complicated assessments to the Member State level.

As regards the Regional Aid Guidelines however, we still see a few points which would require further amendment to avoid complications in the implementation phase for final recipients and financial intermediaries. We are of the opinion that further clarification will ensure optimal efficiency of public support policies, especially when keeping in mind the context of the current on-going crisis environment, all the while allowing maintaining a balanced competitive playing field:

Specific Comments

Paragraph 14: Sectoral exclusions

The sectors for Agriculture, Fisheries and Transport continue to be excluded from the scope of the Guidelines. In our view, the exclusion is not clear enough, the exemptions and sector-specific derogations should be listed in a taxative manner. In particular, we find the situation with regard to the treatment of the transport sector unclear, given that a part of it continues to be admissible under the Guidelines (Paragraph 16 (h)), whereas the greater part has to be dealt with under the sector-specific legal instruments for transport.

Paragraph 16 (t): definition of "start of works":

AECM generally supports the definition of "start of works" as proposed under paragraph 16 (t).

While we view the Principle „application before work on the project or start of the activities" appropriate and tested in practice, in single cases, the interpretation of the specific terminology with a view of establishing the start of activities becomes difficult. In our view, there 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, which is in tune with the wording proposed under Paragraph 16 (t).

However, the wording of Paragraph 60 in turn would seem to be in contradiction with this definition. If maintained, the requirements stipulated under Paragraph 60 are likely to create considerable complications for the implementation of financial instruments because they are in conflict with procedures of prudent credit risk assessment to which financial institutions are subject.

A definition "Start of works only after adoption of state aid decision" (replacing current start of works after application) is no adequate instrument to ensure incentive effect, because substantial increase in the speed, amount or scope of a project can also be initiated in the course of project implementation. Beside time needed for serious assessment, unswayable factors such as budgetary procedures might cause delay of state aid decisions and thus delaying the start of works.

Paragraphs 24 – 25: Individual investment aid linked to the closure of the same or a similar activity in the EEA

We understand the need for stricter requirements with regards to the notification of investment aid for beneficiaries that close or relocate relevant activity up to two years before the project start. Nevertheless, in our view, SMEs should be exempted from this requirement, as it would be disproportional given the project and beneficiary sizes and consequently the relatively low impact of such operations on the local economy.

Paragraph 60-65: Incentive effect - standard application form and counterfactual analysis:

As mentioned above, we see a contradiction between Paragraph 16 (t) and Paragraph 60, which stipulates that the project must only start once the decision to award aid has been made by the public authorities. We see this as is neither efficient (the intermediary and the beneficiary will have to wait on a decision that may drag out the start of the project due to a lack of influence on the decision making process) nor relevant (a fast and/or comprehensive implementation of the project can take place after the start and document the incentive effect accordingly). In addition, no such procedure should be taken over into the GBER, since it should be far more simplified.

The provision under Paragraph 62 requires that a new standard application be submitted. By using the application form, aid beneficiaries must explain what would have happened without aid (i.e. counterfactual scenario). Large companies have additional reporting requirements under Paragraphs 64 and 65. It is unclear from the wording, if the SME has to fulfil Paragraph 62 or whether this is only applicable to larger companies. This should be made more explicit to avoid confusion.

In AECM's view, this provision would present a heavy burden in particular for smaller SMEs which do not have sufficient financial and human resources to prepare this type of document. As argued by our Association in our response to the GBER SAM questionnaire last year, a contra-factual analysis (implementation with/without state aid) is a complicated assessment, 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) and for which there are no harmonized evaluation criteria.

To be able to fulfil this requirement, SMEs will be forced to spend additional resources on services from consultants and advisors. There will be very high increase of operational risk of financial intermediaries who take the responsibility for assessment of criteria prior to provide assistance. The prudent assessment the counterfactual scenario could also become a subject of ex-post disputes with control and audit bodies. In the worst scenario financial intermediaries could reject to be involved in schemes with so high operational risk for them.

As a consequence, given that the detailed analysis of the macroeconomic effects of the project and its costs and burden are in our view disproportionate for the purpose of determining the exemption of state aid, we suggest eliminating formal exemption requirements such as proof of a contra-factual analysis for SMEs, whether part of a questionnaire or not.

Furthermore, we suggest that even for larger companies, the provisions for a contra-factual analysis with its more far-reaching requirements under Paragraph 63 and 64 appear very burdensome and should be avoided.

Paragraph 85: Eligible costs for aid awarded for fundamental change

In our view, the requirements set out under Paragraph 85 will complicate, and add confusion to, the implementation phase. It is both very difficult and onerous to receive and verify the data required under Paragraph 85, as they are not to be found in any standard accountancy statement. The applicants will have to prepare special extracts from their internal documents, which in turn can hardly be verified by those responsible for making the final decision about whether to approve the application or not.

Paragraphs 175 and 176: Entry into force and applicability

We suggest following a proven practice from previous programming periods, which would allow for contracts for support measures to be signed until 30th June 2014, if the application was submitted latest by 31st December 2013. The limit of the state aid intensity should be maintained for the respective projects as well. Changing the rules set out by the block exemptions regulation a few months before it expires would be considered as an evidence of legal instability and uncertainty, one of the main worries for all subjects making decisions about investments.

Annex/ About AECM

AECM has 38 member organisations operating in 20 EU countries as well as Russia, 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