HT.3365 – SAM – GBER review
European Association of Mutual Guarantee Societies – AECM
Rue Washington 40, 1050 Brussels
Interest Representative Register ID number : 67611102869-33

AECM contribution to the public consultation of the European Commission on a draft General Block Exemption Regulation (the GBER) on state aid measures

Brussels, 12 February 2014

A/Introductory remarks

In the context of the ongoing broad review of EU State Aid Rules, which the European Commission launched with its Communication on State Aid Modernisation (SAM) of 8 May 2012, the Commission has published on 18 December 2013 a consolidated and revised draft for the new GBER, for which stakeholders are invited to provide comments.

Given the importance of the GBER (in conjunction with the *De Minimis* Regulation) as an exemption instrument for SME finance, the European Association of Mutual Guarantee Societies (cf. annex) is pleased to provide the Commission services with its feed-back to the proposal. Indeed, most AECM members are either public or private non-profit guarantee institutions providing loan default guarantees for SMEs benefiting from a public counter-guarantee.

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B/Main positions

Working Capital

AECM regrets that in general, there is no provision allowing for at least some degree of financing for working capital. As stated in our response to the Commission's questionnaire last year, 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 Article 12 of the current 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.

Concretely, a solution could be to limit the maximum amount of working capital to a certain percentage of the total investment needs to be financed and exempted under the GBER. Fixing such a proportion should prevent any large-scale abuse of the GBER for non-investment related financing.

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Growing together

Article 1 – Scope: Request for general exemption for micro-companies

AECM continues to plead for a general exemption for micro-companies from State Aid Regulation. The competitive level playing field that Article 107 of the Treaty on 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 according to Article 2 paragraph 3 of annex II "SME Definition" as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 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.

Article 1 – Scope, paragraph 2 a)

According to Article 1 paragraph 2 a) the regulation shall not apply to schemes for which the annual State aid expenditure exceeds 0,01% of the national gross domestic product (GDP) for the Member State concerned, in so far as the annual State aid expenditure of the scheme in question exceeds EUR 100 million. It is unclear why this new provision is needed. In effect, a two-tiered system is introduced, the simple application of the GBER, and the need for notification for any measure above this ceiling. We fear that this new requirement will trigger a wave of notifications, potentially bogging down the process and delaying other types of notification, which may be essential for our members.

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In addition, the question arises, if this new ceiling is in effect conducive for the simplification announced under the SAM, as it would rather create an additional parameter to report on and notify for.

Finally, it is worth asking, if the 0,01 % - rule will affect all Member States in the same way and not actually penalize the smaller ones. One could argue, that smaller Member States that have to launch effective anti-crisis measures in the future years will need a higher percentage of aid to GDP than larger countries, simply because their economy may be less diversified and consequently a larger number of SMEs would be concerned by support measures.

For the reasons above, we suggest deleting this problematic provision.

Article 1 - Scope, paragraph 4 c) read with annex I item 32

The proposed definition for "undertakings in difficulty" refers to the 'hard criteria' as currently set out in paragraph 10 of the Guidelines on State aid for rescuing and restructuring firms in difficulty or as set out in the new guidelines on rescue and restructuring aid. This reference is not appropriate since it limits access to finance of undertakings in an inappropriate way. Thus, if for instance the conditions of one of those hard criteria are met it does not automatically imply that the undertaking is in difficulty. Moreover, the application of such hard criteria would lead to a dramatic increase of requests for individual notification under the on State aid for rescuing and restructuring firms in difficulty.

Article 1 – Scope, paragraph 5 a)

It should be clarified whether the requirement, that the aid beneficiary has to be income tax payer in the country launching the scheme, is in conformity with the rules of the new regulation. Explicitly, the current wording of the new Regulation prohibits only requirements related to headquarters of applicants.

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Article 6 – Incentive effect, annex I definitions - item 29

We reiterate our comments provided in the course of the consultation on a first draft GBER in June last year. Article 6 paragraph 1 states as a condition that the aid must have an incentive effect in order to be exempted under the GBER. According to Article 6 paragraph 2 the beneficiary has to comply with a number of information requirements. The procedure envisaged in Article 6 is not corresponding to the aim of the review to simplify aid granting procedures.

We welcome that in the revised draft a derogation is foreseen for SME. According to Article 6 paragraph 5 (b) this derogation applies in accordance with Articles 20 and 21. It is indicated to add a reference to Article 17 in order to apply the derogation also in accordance with SME investment aid. The current differentiation of state aid for SME is not suitable.

We view the principle application before work on the project or start of the activities appropriate and tested in practice. However, the current definition of the notion "start of works" makes reference to "the first legally binding commitment". To avoid a discussion about the point of time at which a firm orders, 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.

Article 8 - Cumulation

Article 8 paragraph 5 maintains the prohibition of cumulation between GBER and De Minimis aid for the same eligible costs if such cumulation would result in exceeding the aid intensities. Given that De Minimis aid is to such extent reduced that it is not considered to represent distortive aid, we do not understand this prohibition. For the sake of simplification, we suggest eliminating the prohibition, as it creates in fine more administrative burden than actual regulatory benefit.

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Article 9 - Publication and information read with annex III Information regarding State aid exempt under the conditions of this Regulation – Part III

According to these provisions a website needs to be set up at national or regional level providing information inter alia about the name of the beneficiary and the amount of aid received. Yet, the business relationship between banks and their clients is typically based on confidentiality and any deviation from this practice will lead to serious problems of acceptance by the beneficiaries. It is doubted that these provisions are compliant with data protection rules.
Consequently, we suggest deleting these problematic provisions.

Article 10 - Withdrawal of the benefit of the block exemption

According to this Article the Commission may adopt a decision stating that all or some of the future aid measures which would otherwise fulfil the requirements of this Regulation adopted by the Member State concerned are to be notified to the Commission in accordance with Article 108 paragraph 3 of the Treaty if the Member State concerned grants aid allegedly exempted from the notification requirement under this Regulation without fulfilling the conditions set out in the GBER. This sanction is too far-reaching the more since the degree of infringement is not defined. Therefore, we suggest to delete this provision.

Article 17 - SME investment aid

According to Article 17 paragraph 3 b) the acquisition of the capital assets directly linked to an establishment shall be considered an eligible cost if the establishment has closed or would have closed had it not been purchased, and the assets are bought from third parties unrelated to the buyer. In some cases this limited definition will hinder the setting-up of start-ups. Therefore, the focus of this provision should be on the creation of start-ups which is made possible due to the recognition of eligible costs. Consequently, we suggest to delete this requirement.

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Article 21 - Aid for start-ups

We strongly support the promotion of start-ups being characterized by a lack of collaterals, thus welcoming this newly introduced provision. However, the limitation of the duration to maximum ten years (cf. Article 21, paragraph 3 b)) does not correspond to every day practice of long-term finance of start-ups. In order to avoid too high instalments, the duration of loans for start-ups is generally above ten years. Therefore we ask to delete this requirement.

Annex I definitions – item 4 "aid intensity" and 14 "gross grant equivalent"

It seems that changes in the substance of both notions are envisaged. However, the new wording is very complicated. Hence, there is great potential for uncertainty in terms of interpretation.

In term of aid intensity it should be also defined what is the meaning of the eligible costs. Whether the meaning is eligible cost of the project according to the definition made in the Regulation or the meaning could be eligible cost defined in the aid scheme which might exclude some items which otherwise are eligible under the Regulation. Moreover, it should be clarified what discounting period should be applied given that eligible costs are discounted (a day, a month, a quarter, a year).

It should be kept in mind that the notion "gross grant equivalent" (GGE) is also used with regard to the de minimis aid where no reference to percentage of the eligible costs can be used. We should avoid having more than one clear GGE definition.

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Annex I definitions – item 72 guarantee

Pursuant to the envisaged definition guarantee means a written commitment to assume responsibility for all or part of a third party's newly originated quasi-equity or loan transactions, to the exclusion of existing loans. For the purposes of Article 20, the term guarantee includes also counter-guarantees provided to financial intermediaries. This definition should be broader so that it also encompasses guarantees for different transactions such as guarantees for leasing.

Annex I definitions – item 73 guarantee rate

According to item 73 guarantee rate means the percentage loss coverage of each and every transaction of the guaranteed portfolio. However, there is no reason to refer on guaranteed portfolio; a guarantee rate relates only to an individual transaction.

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Annex/ About AECM

AECM has 39 member organisations operating in 20 EU Member States as well as in 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 over € 79 billion and issued a total of over € 26 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.eu

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