

## **AECM comments to the second consultation on the revision of the General Block Exemption Regulation (GBER) in light of the Green Deal**

The European Association of Guarantee Institutions (AECM) and its members welcome the opportunity to provide feedback on the second draft Commission Regulation amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

Following the first public consultation on the “targeted review of the General Block Exemption Regulation (State aid): revised rules for State aid promoting the green and digital transition”, we are pleased to note that several simplifications and improvements of provisions have been taken up in the second draft. More precisely, we very much welcome that the Commission increased the threshold to EUR 500 000 above which the information referred to in Annex III on individual aid awards must be published for aid involved in financial products supported by the InvestEU fund under Section 16. We trust that this change represents a significant step forward towards the reduction of the additional administrative burden for both, for the SMEs applying for aid and for the provider of aid. Similarly, we are glad to see that the structure of the provisions on risk finance has been revised to align them with the revised Guidelines on State aid to promote risk finance investments to ensure consistency.

AECM is strongly committed to support the European Commission in the GBER revising process and would therefore like to further share reflections on the second draft proposal on the revision of GBER with the purpose to improve its application.

- **Working Capital**

AECM very much regrets the fact that there is no provision under the GBER allowing for at least some degree of working capital financing even though

SMEs are in dire need of financing for working capital, a situation that has been worsened by the COVID-19 pandemic and the consequences of the Russian military aggression against Ukraine.

Article 17 of the GBER deals with investment aid to SMEs, meaning that working capital is not covered by the scope of the Article 17. However, all investments defined in Article 17 of the GBER (setting up of a new establishment, extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment, etc.), but also other types of SME support measures taken up in the GBER, are usually characterised by a higher demand for working capital financing. Without this working capital, the investment cannot be undertaken.

Taking into account that SMEs are the backbone of Member States' economies, both in terms of employment and of economic dynamism and growth, and are therefore also central to the Union's economic development and resilience as a whole, we ask the European Commission to facilitate the development of the economic activities of SMEs by including working capital (as a certain percentage of the total investment costs, i.e. working capital limited to 25% of the investment costs) in the list of eligible costs under Article 17 of the GBER.

- **Acquisition of the shares**

Further, AECM and its members very much regret that share deals are not included under the provisions of the GBER. More precisely, according to Article 17 paragraph 3 (b), the sole acquisition of the shares of an undertaking does not qualify as investment.

Given that a business transfer can be structured as a sale of shares (often referred to as a stock deal) or a sale of some or all of the underlying assets, we consider it inappropriate to exclude the sole acquisition of the shares of an undertaking from the eligible costs for the purpose of Article 17.

This exclusion is all the more surprising given that acquisition of assets constitutes an investment for the purpose of the aforementioned Article 17. Moreover, from an economic point of view, the acquisition of shares represents an investment and nowadays, due to the demographic development there are more and more business transfers via the acquisition of the shares.

To this end, we kindly ask the European Commission to include the acquisition of the shares under the scope of the Article 17 paragraph 3 (b) of the GBER or, include it under certain condition as follows:

*(b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased. Sole acquisition of the shares of an undertaking does not qualify as investment, unless the shares of an undertaking have not been sold for the past 10 years. The transaction shall take place under market conditions. In principle, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. However, if a member of the family of the original owner, or one or more employees, takes over a small enterprise, the condition that the assets shall be bought from third parties unrelated to the buyer does not apply.*

- **Aid for start-ups**

Further, we suggest to the European Commission recognizing undertakings under seven years as eligible for start-ups aid, for the purpose of Article 22 paragraph 2, as the current limitation of small enterprises to five years is too restrictive. For instance, in France the status of “Jeunes entreprises innovantes” affects companies under-eight, these companies still being considered as young and fragile. An innovative company needs much more than 5 years to stabilise itself and finds its growth path. Six months of administrative issues followed by the design of the technical project (two years), then the time to prepare the industrial and commercial launch of the innovation (one year). The first turnover will finally be made within the first three years. During this whole period of time, the company needs support to achieve its innovative project, get finance and working capital, reinforce its treasury and prepare its fundraisings.

- **Definition of independent private investor**

With reference to point 72 i.e. the definition of ‘independent private investor’, AECM and its members consider that the proposed definition does not take into account all facets of the investment activity undertaken by both, EIB group as well as NPBI. Moreover, the proposed definition makes reference to ‘development or promotional activities’ without de facto defining such activities, which makes the private investor definition unclear.

To illustrate, there are cases where EIF runs a variety of programmes combining its own resources with resources from NPBI on a pari-passu basis, that

are being undertaken by private stakeholders as financial intermediaries under market conditions (i.e. in the absence of State intervention) which are aimed mainly at incentivising private investments.

Similarly, NPBIs can operate at market terms in accordance with the market economy operator test, meaning the investment of own resources and pari-passu basis, thus sharing the same level of risks and profits as other investors. These examples, which are far from being a complete list of investment activities undertaken by the EIB, the EIF as well as by the NPBI, should be taken into account when defining the ‘independent private investor’. Moreover, the same logic should apply for NPBIs debt and guarantee products when they are priced at market conditions.

In addition, based on their acknowledged expertise and professional skills in private equity investment, NPBIs manage an increasing number of equity funding on behalf of private investors. Such NPBI funds managed on behalf of a majority of private investors (including NPBIs own resources as skin in the game) should therefore be recognised as private investment.

To this end, we ask the European Commission to take into account the aforementioned situations when defining the ‘independent private investor’ definition and consider the EIB, the EIF and the NPBIs as private investors as long as they fulfil the following criteria set out in the definition of the ‘independent private investor’:

*‘Private investors mean investors who, irrespective of their ownership structure, pursue a purely commercial interest, use their own resources and bear the full risk in respect of their investment.’*

In light of the above, AECM and its members would very much appreciate if the European Commission could take our request into its kind consideration by operating the aforementioned changes in the GBER for the benefit of small and medium-sized enterprises.

Brussels, 4 August 2022

## About us

The 47 members of the **European Association of Guarantee Institutions (AECM)** are operating in 30 countries in Europe. They are either private / mutual sector guarantee schemes or public promotional institutions or banks. Their mission is to support SMEs in getting access to finance. They provide guarantees to SMEs that have an economically sound project but do not dispose of sufficient bankable collateral. This so-called SME financing gap is recognised as market failure. By guaranteeing for these enterprises, guarantee institutions help to address this market failure and facilitate SMEs' access to finance. The broader social and economic impact of this activity includes the following:

- Job creation and preservation of jobs by guaranteed companies
- Innovation and competition: crowding-in of new ideas leading to healthy competition with established market participants
- Structure and risk diversification of the European economy
- Regional development since many rural projects are supported
- Counter-cyclical role during crises

SME guarantees generally pursue a long-term objective and our members, if public, private, mutual or with mixed ownership structure, have a promotional mission.

AECM's members operate with counter-guarantees from regional, national and European level. As of end-2021, AECM's members had about bEUR 312 of guarantee volume in portfolio, thereby granting guarantees to around 5.9 million SMEs. AECM's members are by far the most important counterparts of the EIF concerning EU counter-guarantees, handling EU guarantees from the very beginning in 1998.

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