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HT.3365 – SAM – GBER review

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AECM Position regarding the European Commission's Draft for the General Block Exemption Regulation (GBER)

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A/Introductory remarks

In the context of the ongoing review of EU State Aid Regulation by the European Commission, which has been initiated with the Consultation in the Context of the *State Aid Modernization* Initiative (SAM), the Commission has published on 5th May 2013 a first 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 (AECM, see 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.

B/Main positions

1. 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 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 i.e. as 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.

2. 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 Art. 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.

3. Incentive effect

We reiterate our comments provided in the GBER questionnaire in September last year. Article 6 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. This is a more restrictive definition of the start of work or project than previously was only contained in the regional guidelines, where it was only applicable to larger investment projects, which were subject to notification. In the context of SMEs, this rule leads to an excessive administrative burden.

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 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.

Annex IV and all related clauses (Article 6 etc.) of the new Regulation create a formal and bureaucratic burden for a flexible and smooth implementation. Currently, the system of two applications is newly envisaged. The first one is applied only to demonstrate an incentive effect. The second one is an ordinary application form to apply for an aid. Generally, the first form would be only an exercise, processed by consultants and advisors, finally paid by applicants being compelled to pay for these (new) services.

From the technical point of view, the Annex IV requires some unnecessary or unavailable information or some items are not clear enough. Precisely:

- "declaration specifying aid (both de minimis and State aid) already received for another projects in the last 3 years ": There is no relevance to the wording of the new Regulation)
- "aid intensity": The calculation for loans and guarantees requires a special software application to calculate the gross grant equivalent of a loan/guarantee
- "relevant legal basis (national, Union or both)": It should be clarified what type of reference should be included

Generally, the Annex IV should be removed and existing practice from the current period (only one application) should continue, in the interest of improving flexibility, cost-effectiveness and especially simplification of European legislative, which is necessary as well.

Alternatively, given the disproportionate burden created by Annex IV, the derogation of Article 6 paragraph 5 (c) should extend to all SMEs, and consequently, the wording should simple be "aid to SMEs".

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4. Definitions of gross grant equivalent and aid intensity

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. 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.

It should be confirmed that the gross grant equivalent is an amount of finance provided as an aid (in case or loans, guarantees and other non – transparent type of aid, it is a value received when recalculating the nominal value of these instruments on its grant equivalent).

As regards Article 5 para 2 (c) (ii), it appears that calculation methods for the gross grant equivalent, that have been notified before the adoption of the future GBER will be admissible. This is an important point for AECM member organizations, some of whom have undergone a lengthy notification procedure and who need legal certainty under the framework.

In term of aid intensity it should be simply said that it is a percentage obtained when the gross grant equivalent is divided by eligible costs of the project. 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 if eligible costs are discounted (a day, a month, a quarter, a year), see the Article 8.

5. Cumulation

Article 9 para 4 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 this provision, as it creates *in fine* more administrative burden than actual regulatory benefit.

6. SMEs' access to finance

Although the Draft GBER – Explanatory Memorandum stresses that "*The reviewed block exemption rules on SMEs shall contribute to one of the key priorities of the Europe 2020 Strategy, i.e. ensuring access to debt and equity finance for SMEs while stimulating private investments.*" and "*The scope of the new GBER will be extended to certain commonly used fiscal measures and guarantees to provide more legal certainty, considering the increasing*

use of these measures to support high growth SMEs." (page 5), the draft regulation includes only risk finance aid (Article 19) and aid for start-ups (Article 20) in order to ease SMEs' access to finance. However, these categories are insufficient to bridge the financial gap of small enterprises since the majority of SMEs' external sources are debts, and loans remain continuously crucial in financing, after the start-up period too.

The most efficient and least potentially distorting way to promote SMEs' access to finance and correct market failures in the financial markets is through credit-default guarantees. This is why we suggest a new category for guarantees within the group of SMEs' access to finance which may follow the structure of the guarantees for start-ups, but extending it to SMEs at later stage of development.

C/Other comments

1. Recital 35 and Article 15/3

The notion "operational programs" is not defined and it therefore creates legal uncertainty. It is not feasible to prioritize some projects if an "on – demand" system of aid application is used. This is usual for implementation of financial instruments. Better specification of wording should be considered.

2. Article 1, para 2 (a)

We note that the Commission is introducing a new threshold in form of a maximum ceiling of € 100 million or 0,01 % of GDP for any aid scheme to be operated under the future GBER. 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.
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. Interpretative uncertainty arises from some of the terminology used, e.g. who decides and on what interpretative basis, that schemes are "identical" or have "very similar characteristics"? What happens, when parallel schemes exist that target separate regions? This will be extremely difficult to manage in Member States with a federal / decentralized structure.
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.

3. Article 1, para 4 (c)

The proposed definition for "undertakings in difficulty" no longer contains the currently valid simplification for SME start-ups younger than 3 years. This treatment should be maintained to take into account the general economic fact that any normal business start-up undergoes a difficult passage in its first 3 years.

4. Article 1/5/a

It should 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.

5. Article X

Generally, it is a new complication increasing administrative costs. In case of a partner enterprise it might happen that the aid beneficiary linked with large enterprise will save its status of a SME but it could be persecuted because of breaching the rules, set out in the Article. It is an artificial burden for successful enterprises. We suggest removing Article X.

6. Article 9/1 – last sentence

Do we interpret this sentence correctly, that the Commission considers all EU support programmes, such as the future COSME and the RSI, as not constituting aid? Up until now, AECM member organizations have had to use different exemption mechanisms for CIP operations. We would consider a clarification that this is not necessary for the future COSME and RSI programmes as extremely helpful, as it would reduce unnecessary administrative burden.

7. Annex 1

Item 60 – the definition of a guarantee is too narrow; there should be stated all relevant types of financing mentioned (loans, leasing).
Item 61 - there is no reason to refer on guaranteed portfolio; a guarantee rate relates only to an individual transaction.

Annex/ About AECM

AECM has 40 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 € 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