Explanatory note accompanying the proposal for the targeted GBER revision

The purpose of this note is to clarify the objective and scope of the proposal to revise the General Block Exemption Regulation ("GBER") to accompany the next Multiannual Financial Framework ("MFF"). The note accompanies the first public consultation on this GBER proposal.

Public funding that fulfils the conditions of State aid as defined in Article 107(1) of the Treaty of the Functioning of the European Union ("TFEU"), must, in general, be notified to the Commission and approved before it is put into effect. The principles underlying EU State aid rules serve to ensure that public spending does not cause unfair competition for companies operating within the EU's internal market. More specifically, these principles help to ensure that public money does not replace private investment, serves general policy objectives and does not go beyond the amounts needed to meet these objectives. Only where distortions of competition are considered limited, Member States are not obliged to notify State aid to the Commission, if the aid in question meets all the relevant criteria set out in the GBER.

The purpose of the amendments subject to this public consultation is to modify GBER in a targeted way that ensures that these principles are applied in the simplest and most effective way possible to facilitate the combination of national funding and funding from the EU budget.

More concretely, the proposal is to revise the GBER in three areas to make it possible for Member States to implement the following State aid measures without prior notification:

- National funding involved in financial products supported by the InvestEU Fund;
- Research and Development and Innovation ("R&D&I") projects having received a Seal of Excellence under H2020 or Horizon Europe, as well as co-fund projects and Teaming actions under H2020 or Horizon Europe;
- European Territorial Cooperation projects ("ETC").

This initiative relies largely on evidence and data collected in the context of the Commission proposals for the above-mentioned legislative acts in combination with the Commission's market experience and experience stemming from its case practice. Given its nature as an accompanying measure, with only limited margin of discretion as to independent choices as to policy or design of parameters, a separate impact assessment for this initiative was not deemed necessary.

More details on the methodology used are provided in Annex I.

InvestEU Fund

1. Context

The aim of the InvestEU Fund is to provide for an EU guarantee to support financing and investment operations to address specific market failures and mobilise additional private and public investment in support of the Union's internal policies. Member States will have a possibility to contribute their resources to the EU guarantee under the Member State compartment and/or to finance financial products via national promotional banks or other public finance institutions under the support of the InvestEU Fund.

Since national funds (including from the European Structural and Investment Funds) may constitute State aid within the meaning of Article 107(1) TFEU, the aim of the proposal is to improve the interplay between the InvestEU Fund and State aid rules. This should facilitate the deployment of Member States' resources to finance the target investments under the support of the InvestEU Fund, while at the same time ensuring that potential competition distortions are minimised.

Therefore, the purpose of the proposed revision is to further amend the State aid rule-book and to declare State aid involved in financial products supported by the InvestEU Fund compatible with the internal market under certain limited conditions, which in turn relieves Member States from the obligation to submit a prior notification to the Commission.

With the present public consultation the Commission is seeking feedback on the design of the proposed provisions. A crucial element of the public consultation and of the feedback sought by the Commission is to gather data and information on transactions that are envisaged under the InvestEU fund and whether and how these transactions would be covered by the proposal, insofar as they involve State aid.

2. When do the GBER provisions regarding InvestEU apply?

The GBER provisions regarding InvestEU only apply to situations in which State aid in the meaning of Article 107(1) TFEU is involved (see also chart in Annex II). For this to be the case, the following criteria[1] have to be fulfilled cumulatively:

- The support is financed through Member State resources and is imputable to a Member State. This is the case only if the Member State involved has discretion as to the use of the resources involved. In the InvestEU context, imputability and State resources can be present in the following situations:
    - When National Promotional Banks are implementing partners and/or financial intermediaries under the EU or Member State compartment of InvestEU;
    - In case of the EU guarantee under the Member State compartment, given that the EU guarantee is supported by European Structural and Investment Funds.[2]
- The support provides an advantage (i.e. it is not market-conform) and is selective (i.e. only available for certain beneficiaries);
- The support is provided for economic activities (e.g. this excludes public education);
- The support distorts or is likely to distort competition and has an effect on trade between Member States.

In situations in which at least one of the above cumulative criteria is not present, the financing does not constitute State aid and, consequently, the GBER provisions regarding InvestEU are not applicable.

[1] These criteria are clarified in Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.262.01.0001.01.ENG&toc=OJ:C:2016:262:TOC

[2] National funds do not constitute State aid if the European Structural and Investment Funds are contributed to the InvestEU budgetary guarantee compartment without any discretion of Member States and without further conditions other than the geographic allocation inherent to the European Structural and Investment Funds.

The Commission intends to provide guidance for the typical scenarios supported by InvestEU Fund regarding the aid qualification and more particularly the imputability to Member States of public resources contributed by Member States or National Promotional Banks to a thematic financial product (e.g. broadband infrastructure) investment. Such guidance will among others look at the role, selection and independence of the investment manager, the governance structure and other relevant elements.

3. The GBER proposal regarding InvestEU

The GBER proposal regarding InvestEU covers two scenarios:

- The **first (general) scenario** sets out a limited set of **eligibility and exclusion criteria for the final recipients as well as maximum financing amounts.** The Implementing Partners, such as National Promotional Banks, may provide direct financing to projects, such as e. g. infrastructure projects.
- The **second scenario** will apply to financial products supporting smaller financing (generally up to 6 million EUR per final recipient), provided to final recipients by **commercial** financial intermediaries which shall retain some risk exposure. There will be **no** limitations (**"eligibility criteria") for final recipients under this scenario, except** for the exclusion of large firms in financial difficulties. Under this scenario, National Promotional Banks will be able to deploy the successors of COSME or InnovFin financial products through commercial financial intermediaries.

To address these two scenarios, the GBER proposal, besides some amendments of the horizontal provisions in Chapter I, such as definitions or, where appropriate, specific exemptions for aid related to InvestEU from certain GBER horizontal conditions, adds a new Section 16 to the GBER. This new section contains three new articles, namely Article 56d, laying down the scope of the section and common compatibility conditions applicable to aid under any of the two scenarios, and Article 56e (first, general, scenario) as well as Article 56f (second scenario).

R&D&I

Under the next MFF, support for R&D&I will play an important role through the Horizon Europe program. The proposed GBER amendment will accompany Horizon Europe (or before that, Horizon 2020) by facilitating the way in which the centrally managed funding from Horizon Europe can be combined or, in cases of projects having received a Seal of Excellence, substituted with national funding. Following a detailed mapping exercise of the different sets of rules, the amendment aligns certain aspects of State aid rules on the one hand and Horizon Europe on the other. This will prevent potential discrepancies causing delays or difficulties in the roll-out of R&D&I funding under the next MFF.

More concretely, the GBER draft subject to this public consultation provides for exemptions to the notification obligation and of the requirement to carry out at national level an assessment of the quality of a R&D&I project already assessed under Horizon rules in the following areas:

- Aid for SMEs for research and development projects as well as for Marie Skłodowska-Curie actions awarded a Seal of Excellence quality label under Horizon 2020 or Horizon Europe. (Article 25a)

- Aid provided to co-funded projects, which have been independently evaluated and selected following transnational calls under Horizon Europe. (Article 25b)
- Aid provided to Teaming actions, which have been independently evaluated and selected following transnational calls under Horizon Europe. This includes the possibility to provide State aid for project-related infrastructure investments under such Teaming actions. (Article 25b)

European Territorial Cooperation

The promotion of ETC projects has been an important priority in the EU's Cohesion policy for many years. Under State aid rules a block exemption for aid provided in the context of such ETC projects already exists. Given the experience gained in the area, the GBER draft subject to this public consultation proposes to extend the possibilities of aid being provided to ETC projects in two ways:

- The current block exemption, which is limited to aid being provided to SMEs, is extended to allow aid also to be provided to large undertakings without prior notification. (Article 20)
- In addition, the GBER provides for a simplified block exemption for very small amounts of aid provided to ETC projects (up to EUR 20 000 per undertaking per project). (Article 20a)

ANNEX I: Background on eligibility/compatibility conditions, aid intensities and notification thresholds

The proposed conditions, as regards eligibility and compatibility as well as aid intensities and notification thresholds, are designed relying on the conditions that already apply for the corresponding categories of State aid in the current GBER.

The compatibility conditions under the current targeted revision are complimentary to the relevant EU funding programmes in the sense that safeguards already included in those programmes and the compliance of which is ensured by the involvement of the Commission in the management of those programs can be relied upon for ensuring compatibility of any State aid involved in the financing and, therefore, do not have to be replicated in the GBER.

As to the level of aid intensities and thresholds included in this proposed revised text, they are, like other compatibility criteria, based on the current GBER rules. Given the accompanying nature of the proposed revised text, the level of aid intensities takes, to ensure alignment to the greatest extent possible, into account the applicable funding rate provided by the relevant EU funding programme. For areas in which the relevant EU funding programmes do not provide for specific funding rates, the proposed thresholds in the revised text are, as a starting point, also based on the current GBER rules and are, where appropriate, adjusted taking the underlying policy objectives of the centrally managed EU programme into account.

InvestEU

Concerning the amendments to the State aid rule-book in relation to InvestEU, the Commission took into account that InvestEU is built on safeguards relevant for competition policy, which are already embedded in the rules on the InvestEU Fund (EU objectives, additionality and market failure, limiting of the crowding-out of private operators). Moreover, the Commission will approve the product design and guarantee agreements. Given these safeguards both on substance and process, the Commission considers that only compatibility conditions are necessary that are complimentary to the InvestEU framework and that are proportionate to the potential level of distortions of competition. As such, under the InvestEU related amendments to the GBER, it is, for example, not necessary to quantify the aid element of the public financing received and also potential residual aid to the various actors involved (such as the financial intermediary level) may be declared compatible with the internal market.

Concerning the relevant thresholds, the Commission took the fact into account that under InvestEU financing is provided through financial instruments rather than grants. In contrast to grants, where typically the full amount of financing received constitutes State aid, under financial instruments in the InvestEU context only part of the financing provided to final beneficiaries constitutes State aid and it is not required to quantify the aid element. As such, using the existing thresholds under the GBER, which are based on grants or a gross-grant equivalent (requiring quantification of aid), would not have been appropriate. The relevant thresholds for financing under InvestEU take this into account by applying a multiplier factor to the thresholds laid down for the relevant aid categories under the current GBER.

R&D&I

The current GBER already contains block exemptions for aid in the area of R&D&I. The current proposal provides for certain adjustments to the State aid rules applicable to this area for situations in which State aid is combined with centrally managed funds under Horizon 2020 or Horizon Europe, which is possible due to the design of the relevant rules under Horizon 2020 and Horizon Europe and the involvement of the Commission in the evaluation and selection of projects. This ensures that potential distortions of competition are limited and that it is only necessary to have limited complimentary rules for such projects in the GBER.

Having the above in mind, the aid intensities proposed, e.g., for aid for projects awarded a Seal of Excellence quality label under the new Article 25a are set at a maximum level of 100% for fundamental and industrial research and of 70% for experimental development corresponding to the corresponding funding rates set out under the Horizon Europe programme.

For infrastructure investments under Teaming actions, for which Horizon 2020 and Horizon Europe do not provide specific funding rates, the revised text proposes that the aid must not exceed 70% of the investment costs. This proposed aid intensity is based on the current maximum aid intensity of 50% for investment aid for research infrastructures provided for in Article 26 of the current GBER, but takes into account that the underlying logic of Teaming actions is inspired by cohesion policy.

ETC

The current GBER also already provides for a block exemption for ETC projects. However, this block exemption is limited to SMEs. The experience gained by the Commission over the past years on ETC projects makes it possible to extend the scope of this block exemption also to large undertakings, without any significant risk of increased competition distortions. The proposal, in addition, provides for a block exemption for very small aid amounts under ETC projects. Such financing has in the past been provided as *de minims* aid. However, in particular in ETC projects with large amounts of beneficiaries receiving very small amounts of funding, ensuring compliance with the conditions under the *de minimis* Regulation can sometimes be disproportionate to the potential risks of competition distortions. As such, and given the importance of ETC projects for EU cohesion policy and the very limited risks for competition distortions, the new block exemption provides for a simplification for such small aid amounts, which under the proposal would be block exempted without the need for any further conditions to be fulfilled.

ANNEX: Applicability proposal InvestEU GBER for state resources combined with the InvestEU Fund