

# REFIT Platform Opinion

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## **REFIT Platform Opinion on the State aid and ESIF by a member of the REFIT Platform Government group**

The REFIT Platform has considered the **submission** made by one member of the Government group who claims that cohesion rules oblige Member States to comply with State aid regulation whenever they grant State Aid with Structural funds, for what the control is doubled. The submitter requests that 1) a specific regulation for ESIF co-financed projects is included in the General Block Exemption Regulation (GBER), with flexible conditions and that 2) ESIF co-financed aid-schemes be excluded from the monitoring proceedings which have already been audited by ESIF authorities.

The **Stakeholder group** recognizes the concerns and concurs that the combination of State aid rules and other legal or financial instruments, such as the ESI-funds, can possibly cause unnecessary administrative burdens. However, the Stakeholder group considers that both proposals made by the submitter i.e. whether ESIF co-financed projects should be included in GBER or whether these projects should be excluded from State-aid monitoring proceedings, are questions of a political nature and thus fall **outside the mandate of the REFIT Platform**. The Stakeholder group suggests the European Commission to take adequate notice of the complexity and discouragement in ESIF funded projects. The Stakeholder group does also acknowledge the Commission's ambition to address the possible interconnection of State aid and other instruments as per quote in MFF 2021-2027 proposal "*to simplify and streamline State aid rules to make it easier to link up instruments from the EU budget with national funding*".

The majority of **Member States** that contributed to the opinion supports partially or totally the recommendations of the Stakeholder group and considers this submission falls outside the mandate of the REFIT Platform. Most Member States having contributed would support further alignment and greater coherence of the State aid rules with other instruments. Some Member States express doubts with regard to the proposal for automatically block exempting all State aid co-financed through Structural Funds or other EU financing instruments. Some Member States do also recognise the ambition of the Commission in the area of interconnection of State aid and other instruments.

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### 1 Submission V.8.a by a member of the REFIT Platform Government group

*It is worth mentioning that, currently, State aid issues are being examined and **controlled systematically, both ex-ante and ex-post, by various authorities and auditors**, on the grounds of different legislation. Indeed, cohesion rules oblige Member States to comply with State aid regulations whenever they grant State aid with **Structural Funds** and this is severely audited. At the same time, State aid rules foresee the possibility for the European Commission to examine and control aid granted by Member States at any moment.*

*This implies a double control for Member States and aid beneficiaries on identical issues, as the same information has to be provided several times to various authorities and auditors (e.g. aid instrument, incentive effect, eligible costs, etc. and in general compliance with State aid rules). This increases administrative burdens and costs and it is especially damaging to SMEs, which, occasionally, lack enough knowledge and human resources to properly fulfil with legal requirements.*

*This problem could be solved either by including a specific regulation for ESIF cofinanced projects in the General Block Exemption Regulation, with flexible conditions, or by excluding from the monitoring proceedings those co-financed aid schemes which have already been audited by ESIF authorities.*

### 2 Policy Context

#### Legal framework

The issue relates to the following pieces of EU legislation:

- *Article 108 TFEU*: This provision requires Member States to notify any plan to grant State aid and to refrain from granting such aid until the Commission has approved it (notification and standstill requirement). This provision was already part of the Treaty of Rome.
- Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (the so-called "Procedural Regulation"): The Procedural Regulation sets out the detailed procedures

applicable in the area of State aid, including the procedures applicable to the notifications by Member States of planned State aid measures and their treatment by the Commission.

- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing *Council Regulation (EC) No 1083/2006* (the so-called Common Provisions Regulation): **Article 6 of the ESIF "Common Provisions Regulation provides that "Operations supported by the ESI Funds shall comply with applicable Union law and the national law relating to its application ('applicable law')".** This also implies that both the ESIF and the national funding of such operations have to comply with EU State aid rules. The Common Provisions Regulation also sets out extensive procedures to be followed for the approval by the Commission of Partnership Agreements, Operational Programmes, Financial Instruments and Major Projects, as well as for the monitoring and auditing of these operations.
- [\*Council Regulation \(EC\) No 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid \(which replaces as of 14.10.2015 Council Regulation \(EC\) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 \(now 87 and 88 respectively\) of the Treaty establishing the European Community to certain categories of horizontal State aid\*](#) the so-called "Enabling Regulation": The Enabling Regulation sets out the framework applicable to measures that are exempted from the notification requirement under Article 108(3) TFEU (type of measures that can be block-exempted, transparency and monitoring provisions applicable to such measures etc.). This Regulation enables the Commission to adopt regulations defining criteria under which aid in these categories can be exempted from the notification requirement. In particular, this is done via the Commission Regulation 651/2014 of 17 June 2014 (General Block Exemption Regulation, "GBER").

### **Current state of play**

At the outset, it is to be noted that the EU State aid rules and Economic and Social Cohesion policy constitute distinct but complementary policies, each having specific objectives and means of action. The application of the State aid rules does not replace or duplicate the application of the rules of the Structural Funds, but complements the ESIF structures: whilst ESIF rules are designed to ensure that the funding contributes to regional and social development, State aid rules ensure that they do so without unduly distorting competition in the internal market. In designing State aid rules, the Commission has made a major effort to set up a framework that carefully balances the positive effects of State aid with the need to avoid potentially negative effects (distortion of competition, negative spill-over effects).

The assessment of the compatibility of State aid currently performed by the Commission takes into account the rules of the Structural Funds. For instance, State aid may be authorised by the Commission if it contributes to the achievement of one or more of the objectives of common interest identified in article 107(3) TFEU. For regional State aid, the contribution to a common objective is considered to be the case for ESIF transactions, since they have been implemented in accordance with regional development strategies defined in the ESIF rules with a view to

contributing to the Europe 2020 strategy.

It has to be noted that at present it is legally not possible to provide an exemption for all ESIF co-financed projects ("with flexible conditions") as no legal basis exists. Indeed, there are legal restrictions to what can be block exempted. This is only possible for the areas laid down in the "Enabling Regulation", i.e. Council Regulation 2015/1588 which lists the categories of aid (in terms of objectives) which can be block-exempted. There is no basis in the Enabling Regulation for an exemption along the lines suggested in the Opinion.

Indeed, if a public subsidy to a certain economic activity is block-exempted simply on the basis of the origin of the public funds, this may lead to situations of distortion of competition and inequality of treatment within the EU because one situation would be block-exempted (because funding comes from ESIF), whereas a similar situation would not (simply because the funding in that case would come exclusively from other, national, sources), although the impact on the internal market would be the same. This explains why block-exemption of State aid should be made on the basis of the objective effects on the internal markets of a given measure, and not on the characteristics of its public funding. However, given the limited distortive effect of some European Territorial Cooperation (ETC) projects on the internal market, a proposal for an amendment to the Enabling Regulation has been tabled, with a view to further facilitate the State aid treatment of ETC projects falling under State aid rules. This amendment as well as other changes have been adopted through Council Regulation (EU) 2018/1911 of 26 November 2018 amending Regulation (EU) 2015/1588 (*Enabling regulation*). This should give the Commission the opportunity to targeted simplifications for funding of European Territorial Cooperation (ETC) programmes (Interreg), in particular to cover large undertakings. That would complement the broad exemption which already applies in this area.

Moreover, very significant progress has been made by the Commission in simplifying and clarifying State aid rules in recent years through the State Aid Modernisation (SAM) reform. In particular, the considerable extension of the scope of GBER has eliminated the need to notify the vast majority of ESIF co-financed State aid measures. This has considerably reduced the administrative burden, especially for ESIF stakeholders.

In addition, DG COMP is working closely with DG REGIO to streamline State aid rules for ESIF operations where there are concrete examples of instances in which State aid control presented an unjustified obstacle to the implementation of ESIF operations. The two Commission services have a comprehensive action plan since March 2015 for strengthening administrative capacity for the management of Structural Funds in the field of State aid.

As regards co-financed aid schemes which have already been audited by ESIF authorities, audit controls under Structural Funds rules cannot replace the Commission's and the Member States' joint responsibility for ex post monitoring, which is required under Article 108(1) of the Treaty, according to which "the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States". The Procedural Regulation and the GBER then provide a more specific basis as regards the documentation to be kept for monitoring purposes. Therefore those co-financed aid schemes cannot currently be excluded from State aid monitoring proceedings.

However, State aid monitoring is not general but always targeted at a small sample of subsidies and is therefore unlikely to represent a disproportionate administrative burden for the companies

(SMEs or large companies) which are aid beneficiaries. For instance, in 2015, there were approximately 4,500 aid schemes operating in the EU Member States and DG COMP annual monitoring cycle covered 96 of them.

In a normal State aid monitoring case the Commission typically checks the legal basis and the national implementing rules and a limited sample of 3-8 individual aid beneficiaries. This means that only a very limited number of aid beneficiaries will be concerned. In addition, the Commission only asks for information that should already have been available to Member States' authorities when they granted the funding, and therefore there should not be any additional burden for companies to provide any further information. .

Furthermore, also in respect of ex-post controls, significant efforts are being made to ensure that the administrative burden is kept to a minimum. The Commission services (DG COMP, DG REGIO and DG EMPL) have agreed to coordinate and better align their audit and ex-post monitoring activities with a view to avoiding duplication of ex-post monitoring and audit activities.

For instance, DG COMP shares its experience in ex-post monitoring of State aid schemes with DG REGIO and DG EMPL, by sharing the outcome of the annual monitoring cycles with these services.

Moreover, the Commission services have shared with the audit and coordination bodies of the Member States "GBER Checklists" enabling them to check in advance whether all compatibility conditions are fulfilled or to improve audits in this area. Typology of problems detected, good and bad practices and lessons learned from monitoring are also shared with Member States in many different ways (working groups, country coordination network, multilateral or bilateral audit coordination meetings, etc.).

### **3 Opinion of the REFIT Platform**

#### **3.1 Considerations of the REFIT Platform Stakeholder group**

The Stakeholder group recognises the concerns raised by submission V.8.a. The combination of State aid rules and other legal or financial instruments, such as the ESI-funds, can possibly cause unnecessary administrative burdens. The better alignment of ESI-funds with State aid rules might avoid potential unnecessary administrative burdens in the future and lower the threshold for the use of ESI-funds (also for SME's).

In this regard, the Stakeholder group recognizes the ambition by the Commission to address the possible interconnection of State aid and other instruments, considering that they stated the following in the proposal for the MFF 2021-2027: "to simplify and streamline State aid rules to make it easier to link up instruments from the EU budget with national funding".

However, the question whether ESIF co-financed projects should be included in the General Block Exemption Regulation or if these aid schemes should be excluded from (State aid)

monitoring proceedings is part of a political discussion about the balance between ensuring fair competition on the one hand and the positive economic incentive effects of ESI-funds on the other. As past opinions show, the Stakeholder group takes issues on the discouragement of the use of EU funds seriously. Therefore, the Stakeholder group suggests the European Commission takes adequate notice of the complexity and discouragement in ESIF funded projects raised by the submission. Nonetheless, questions specifically regarding this balance, and whether ESI-funds should be exempted from State aid regulations, is ultimately a political discussion and thus falls outside the mandate of the REFIT platform.

### 3.2 Considerations of the REFIT Platform Government group

Twenty one Member States contributed to this opinion.

Thirteen out of twenty one contributing Member States partially or totally support the recommendations of the Stakeholder group; few of them recognise the ambition of the Commission in the area of interconnection of State aid and other instruments. Two of them refer to the MFF as action to improve regulation in potential interconnections between State aid rules and other legal/financial instruments.

Two of them emphasize the importance to continue this discussion (especially with regard to facilitations for RDI funding). Another one provides a number of conclusions made by the High Level Expert Group monitoring simplification for beneficiaries of ESI Funds, as regards the issues addressed.

Five Member States agree with the Stakeholder group that this is an area of political nature that falls outside the mandate of the Platform.

Seven Member States support further alignment and greater coherence of State aid rules and different instruments but express doubts with regard to the proposal for automatically block exempting all State aid co-financed through Structural Funds or other EU financing instruments.

One Member State supports the simplification of State aid rules.

#### Member State 1

MS1 strongly supports further alignment and greater coherence of the State aid rules of different (EU) instruments. We should nevertheless not forget the important objective of State aid rules, which is to avoid unfair competition in the EU. For his reason MS1 does not advocate for a *carte blanche* for further block exemptions, or to further exclude certain beneficiaries of EU funds from the scope of the State aid rules.

MS1 does recommend the Commission to align definitions such as innovation and innovation aid, avoid parallel control structures, and would welcome a fast-track aid notification procedure for aid granted within an EU initiative, similar for example to the approach the Commission has on EFSI funds

**Member State 2**

MS2 does not object to the proposals addressed to the Commission.

**Member State 4**

MS4 generally supports the simplification of State aid rules.

**Member State 5**

MS5 is supportive.

**Member State 6**

With reference to cohesion policy, MS6 has no issues to put forward.

MS6 can support calls for the better alignment of ESI funds with State aid rules in order to avoid unnecessary administrative burden and to further streamline State aid rules to simplify further their implementation.

Concerning the question of whether the ESI funds should be included in the GBER or not, MS6 agrees that this is a political issue that goes beyond the remit of the REFIT Platform.

**Member State 7**

Courtesy translation

MS7 supports the aim of a better articulation of the rules on European structural and investment funds and State aid and of avoiding multiple controls, particularly for SMEs. They want the relevant rules, recently amended by Council Regulation (EU) 2018/1911 of 26 November 2018 to adopt specific exemptions for financing which are qualified as State aid under the European structural and investment funds are translated into real simplifications. However, they share the view of Stakeholders that discussions on this subject are outside the mandate of the REFIT Platform as they must be carried out within the framework of the envisaged bodies such as the State aid Advisory Committee.

*Original text*

*EM7 soutiennent l'objectif d'une meilleure articulation des règles relatives aux fonds européens structurels et d'investissement et aux aides d'Etat et celui d'éviter de multiples contrôles, en*

*particulier pour les PME. Elles souhaitent que les règles applicables en la matière, récemment modifiées par le règlement (UE) 2018/1911 du Conseil du 26 novembre 2018 permettant d'adopter des exemptions spécifiques pour les financements qui sont qualifiés d'aides d'Etat dans le cadre des fonds européens structurels et d'investissement, se traduisent par de réelles simplifications. Elles partagent toutefois l'avis des parties prenantes sur le fait que les discussions à ce sujet sont hors du mandat de la plateforme REFIT en tant qu'elles doivent être menées dans le cadre des instances prévues telles que le comité consultatif des aides d'Etat.*

### **Member State 8**

While it seems like a good idea to simplify the ESIF rules, the Commission has already announced this for the MFF. Need to check the coherence.

### **Member State 9**

MS9 fully supports efforts on continuing to ensure coherence between State aid and ESI-Funds rules. Moreover, any approach by which administrative burden caused by monitoring obligations could be reduced (e.g. avoiding the duplication of monitoring measures) would be highly appreciated. This in particular refers to reporting and transparency exercises.

However, this MS expresses doubts with regard to the proposal for automatically block exempting all State aid co-financed through Structural Funds or other EU financing instruments. Such exemption might endanger the necessary level playing field in the application of rules and enhance the subsidy race between net-paying and net-receiving Member States.

### **Member State 11**

MS11 comments:

#### **1) Inclusion of ESIF co-financed projects in the General Block Exemption Regulation**

ESIF co-financed project cannot be block exempted just on the basis of the origin of the public funding but need to be block exempted on the basis of the objective effects on the internal market. Currently a large number of aid categories are contained in the GBER. Therefore, the vast majority of ESIF co-financed projects can be block exempted. There is no need to notify them to the EC and thus administrative burden is minimized.

#### **2) Exclusion of ESIF co-financed projects from monitoring proceedings**

On the one hand, GBER led to the decrease of the administrative burden and to the acceleration of the granting of funding. On the other hand, this Regulation also transferred the responsibility for compliance of the granted aid with the GBER rules to member states (to the State aid providers). Therefore, the Commission carries out ex post monitoring in order to verify that the GBER rules are correctly applied. It has to be mentioned that the number of monitored cases is

not large and it is provider who has most of the requested information.

### **Member State 12**

MS12 finds that as a main rule State aid Regulation should apply when Member States grant aid through ESI-funds. At the same time, MS12 find it important to ensure an adequate interplay between the two set of rules in order to simplify administration of the funds. MS12 agrees with the view of the Stakeholder group that questions specifically regarding this balance, and whether ESI-funds should be exempted from State aid regulations, is ultimately a political discussion and thus falls outside the mandate of the REFIT platform.

### **Member State 13**

MS13 also recognises the ambition of the Commission in the area of interconnection of State aid and other instruments and agrees with the Stakeholder Group that the Commission takes note of the complexities raised by the submission. However, MS13 also agrees with the Stakeholder group that this is an area for political discussion, rather than solely a regulatory matter, and suggests that the submission be regarded as falling outside the mandate of the Platform.

### **Member State 14**

MS14 does recognize the problem described in the Submission V.8.a by a member of the REFIT Platform Government group, but does not think that the proposed measures are a right way to handle the problem. As explained in the Policy context by the Commission services, block exempting a certain activity purely based on the origin of the public funds may lead to situations of distortion of competition and inequality of treatment within the EU. However, having said that, it can be noted that MS14 is in favor of the Commission proposals put forward on two new block exemptions (COM(2018) 398 final) on InvestEU and European Territorial Cooperation programmes (Interreg).

Efforts to coordinate and better align audit and monitoring of the State aid compliance with other audits and monitoring of ESIF funds are important in order to reduce the overall administrative burden associated with these funds.

MS14 agrees with the considerations of the Stakeholder Group in inviting the European Commission to take adequate notice of the submission while further considerations fall outside the mandate of the REFIT Platform.

### **Member State 15**

Further comments to the Policy Context of the DG COMP concerning the proposal for a Council Regulation amending the Enabling Regulation (EU) 2015/1588.

The multilateral meetings provided in the mentioned Regulation, along with correspondence

exchanged in the context of these meetings among MS and EU Commission, are the proper forum to present a MS's recommendations for amendments in the State aid Rules. Therein, national State aid Authorities present any views and experiences of the MS based on feedback from the granting authorities. A recommendation in the pre-mentioned procedure to insert or accept new provisions is a policy matter of the related to the amendment granting authorities.

Regarding the Stakeholders' comment for exemption of ESI- funds from State aid regulations, this is possible only if the aided project does not consist, directly or indirectly an economic activity, as the term economic activity is defined by EU Competition Law. Otherwise, a State aid assessment is required.

### **Member State 16**

MS16 notes the work in the area of interconnection of State aid and other instruments. MS16 supports the view of the Stakeholder group in regards to this submission and also believes that this is an area for political discussion, rather than solely a regulatory matter, and suggests that there are other forums to take forward the concerns raised.

### **Member State 17**

MS17 recognizes the double control of the procedure rules, which may represent an unnecessary administrative burden mainly for SME's. Complying with the rules and monitoring of ESIF is not simple, clear or intuitive which is in itself a potential process to be the object of study of this Platform.

However, we should not think that simplification of the ESIF that are State aid, goes through a guarantee of a category of exemption in General Block Exemption Regulation (GBER). GBER has a very specific purpose – aid that not affect the European market, since the impact of the aid only happens in the Member State that gives the aid.

Discussions regarding the need to improve regulation in potential interconnections between State aid rules and other legal or financial instruments, such as the ESIF, are planned, including in the context of the next MFF 2021-2027.

### **Member State 18**

MS18 supports the approach of simplification and harmonisation regarding State aid rules and ESIF regulations. MS18 appreciates the progress made by the Commission in simplifying State aid rules, as well as close cooperation between the Commission services to streamline State Aid rules for ESIF operations. At the same time, MS18 believes that there is still room for better alignment of ESIF with State aid rules. Decrease of double administrative burden for ESIF co-financed projects that constitute State aid is necessary.

In MS18's opinion, simplification could be implemented by streamlining State aid rules with ESIF regulations.

## **Member State 20**

MS20 agrees with the Commission's explanation about the complementarity between State aid's rules and ESIF rules. However, sometimes concrete complementarity disappears to give way to inconsistencies and incompatibilities. It is then that difficulties arise.

It is true that the assessment of the compatibility of State aid currently performed by the Commission takes into account, in certain topics, the rules of the Structural Funds. But, it is also true that the assessment is linked to the prior notification. It is interesting that RDI projects co-funded with ESIF, among other type of projects, fall under GBER (General Block Exemption Regulation) rules, particularly by reasons of opportunity. And, it is the context in which we must seek some consistency.

MS20 knows that Commission is aware of these problems and it is working to solve them. The proposal tabled for the amendment to the Enabling Regulation (according to the draft that we have been able to know) proves it's concerned about the problems arising when different sets of rules are applicable to the same support measure by reasons of different funding sources. In MS20's view, there is no question of undermining the block-exemption principles, still less to create inequality of treatment within the EU. The question is to avoid inconsistencies between rules and duplications of administrative burdens in the most efficient manner.

To do this and, in particular, as regards the submission V.8.a, a new exempted category is not specifically proposed. In MS20's view, it is unnecessary to solve certain problems by means of a new category, and consequently, it is unnecessary to refer to the Exemption Regulation.

As regards "*flexible conditions*", allow us to recall the end of Article 7, paragraph 1 GBER, where a "flexible condition" makes it possible to use the simplified cost options set out in Regulation 1303/2013, if the operation is at least partly financed through a Union fund. We think this shows a path of action consisting of modifying the existing categories to fit them to fulfil new requirements. The State aids rules prolongation enlarges the time of validity of GBER making feasible an amendment in this sense to solve certain problems.

MS20 is confident about the collaboration between Commission services to put in place an ex-post monitoring procedure simpler, better aligned and where there is no duplication of administrative burden. Independently from the apparently small number of monitored SMEs, MS20 has to take into account that each one of them beards the costs on its own and the perception of this damage is spread out to other SMEs. By means of this collaboration, MS20 is sure that the Commission will be able to find the most adequate instrument to do this with the highest level of legal certainty for Member State's administrations and beneficiaries.

To avoid control's duplication, MS20 suggests that each ex-post monitoring, in both cases State aids and ESIF, be carried out by mixed teams of the different Commission services involved.

MS20 hopes that the outcome of this collaboration can be materialised in an instrument as, for instance, a Code of good practice or a Communication from the Commission.

### **Member State 21**

MS21 cannot support any moves aiming at excluding ESIF or other structural funds from the State aid rules since that would create a dangerous State aid spiral between Member States which would cause serious harm to European competitiveness overall. That said, MS21 welcomes better alignment of various European objectives as long as the State aid rules are respected. MS12 can therefore support the Stakeholder group's conclusion that this issue falls outside the mandate of the REFIT Platform and that it should not be discussed further in this forum.

### **Member State 22**

MS22 partially supports this suggestion. MS22 particularly supports the aim of reducing administrative burden. However, for the time being there is no legal basis for block exempting all ESIF- co-financed projects. This would require another modification of the Enabling Regulation 2015/1588. (The MS22 suggestion to include a legal basis for allowing block exemptions of projects co-financed by structural funds received little support in the negotiations on the revision of the Enabling Regulation.)

However, the Commission signalled that it would be possible to discuss further "reliefs" in the field of State aid with regard to projects co-financed by structural funds (as well as projects financed by EU funds and complemented by member states funding) within the context of the revision of the GBER.

MS22 emphasizes the importance to continue this discussion (especially with regard to facilitations for RDI funding).

### **Member State 23**

The need for closer harmonisation of rules existing at the level of different EU policies and at the junction of them, especially as regards cohesion policy and competition policy, has been raised, on a regular basis, by Polish authorities in many for a, especially the High Level Expert Group monitoring simplification for beneficiaries of ESI Funds, which has issued a number of conclusions as regards the issues mentioned above.

The main issues arising at the junction of cohesion policy rules and competition rules are:

- Application of different rules in the area of centrally managed funds and funds implemented under shared management

Lack of harmonisation of rules as regards granting support under cohesion policy and other EU policies. The main problem is the application of differentiated approach to setting rules as well as establishing the amount of public co-financing under cohesion policy programmes, where State aid rules apply and centrally administered programmes, often covering the same types actions, but for which State aid rules do not apply. The instruments implemented under shared

management are subject to greater restrictions, which means that the support provided under the cohesion policy programmes is provided on much less attractive conditions (not only in terms of financial attractiveness) than support provided under for example HORIZON 2020 and still Commission's expectations as regards verifying the fulfilment of requirements is higher, see verification of SME status - for H2020 actions the status of the SME is declared by the applicant itself, on the basis of the IT tool-based self-assessment.

In the case of granting State aid, the applicant's declaration has to be verified and backed up by an analysis of the financial documents and the search for capital or personal ties, performed by the body granting aid.

MS23 proposes to unify the rules as regards use of SME status assessment tool in the case, when such assessment is of significance for a certain target group of the recipient of aid, as well as non-differentiation of audit/control requirements as regards verification of this issue under programmes managed centrally and these under shared management.

- Need for simultaneous application of State aid rules and rules concerning revenue generating operations - article 61 of Regulation No 1303/2013

The existing rules discriminate large enterprises running operations co-financed from cohesion policy funds since:

- in the vast majority of cases the allowable level of support resulting from the State aid rules will be lower than that resulting from the application of article 61 - which means that the beneficiaries of the funds will be burdened with unnecessary, but high administrative burdens not experienced by the enterprises receiving State aid from national sources,
- in those few cases, where the level of support resulting from the application of article 61 is lower than the allowable level of State aid, the application of the current regulations leads to the situation, where the same project in the case of national co-financing may receive higher level of support than in the case of funding from EU funds. Paradoxically, it may happen that an R&D project, covered by State aid, co-financed from cohesion policy funds in one of the poorer regions of the EU, will receive lower support than a similar project implemented in one of the richest regions of the EU, but co-financed from national funds. And in the case of regional aid, the Commission should be asked a question: why have you set up regional aid maps, specifying the allowable aid ceilings for the poorest regions, since the beneficiary using these funds, that the theoretically should support the development of these regions, must count on the potential reduction of these ceilings?

Verification of conditions for support for individual beneficiaries being large enterprises involves a great deal of organisational and financial inputs, primarily on the beneficiary side, but also on the part of the institution that verifies the documentation. This situation takes place independently of the interpretation of the present article 61. In each case, the level of co-financing resulting from the calculation of funding gap should be calculated and the level of co-financing resulting from the application of the State aid rules should be determined as well. In this context it should be borne in mind, that support for large enterprises has been significantly reduced in the current perspective by introduction of article 3(1) of the ERDF Regulation.

It should also be borne in mind that the principles MS23 proposes principles were successfully applied in the 2007-2013 programming period, which provided greater legal certainty for beneficiaries and institutions. Support for entities (performing economic activities) that were subject to State aid regulations was limited by these regulations, and in the case of entities to which the provisions on State aid did not apply, the rules for revenue generating operations applied.

- Lack of possibility of financing actions adopted in the operational programmes approved by the Commission, due to their inadmissibility from the point of view of State aid rules

The classic and the most visible example of such approach is the position of the Commission, that makes it virtually impossible to co-finance heating and cooling systems which are inefficient in the meaning of article 46 GBER. Basically in almost all the ROPs one can find actions, aiming at supporting district heating networks, which are inefficient (and these programmes have been adopted through Commission's decision), achievement of which is measured with relevant indicators. Institutions are discharged of their obligations as regards achievement of the target values of these indicators.

Despite that fact, the Commission has informed the MS23's authorities, during the exchange of correspondence between the MED, DG REGIO and DG COMP, that, from the point of view of State aid, it is not possible to finance inefficient networks (even if the network to be financed would be much more environmentally friendly than the existing ones), which at the same time constitute the majority of networks that would be financed by the ROPs adopted by the Commission.

Another example is the possibility of granting State aid to companies operating in the shipbuilding sector. Despite the fact that appropriate measures have been envisaged in some MS23 regional operational programmes, it has been necessary to prepare the notification of the aid scheme in order to enable these actions to be carried out at all. Despite a simple structure and a small scale of the State aid scheme (a budget of less than EUR 15 million), the notification process has already lasted 10 months and the European Commission has already sent three sets of questions, consequently raising new issues that had not appeared in previous sets. Such a procedure does not guarantee the success of the notification process or the completion date of the process, which hinders the managing authorities from managing the allocation of the operational programme.

- Very limited possibility of application of simplified costs options

Major problems also arise from the fact that, until this year's amendment to GBER, there was no legal certainty as regards the possibility of granting State aid in the case of projects calculated against simplified costs (article 67 of Regulation No 1303/2013 - standard scales of unit costs, lump sums, flat rates). Notwithstanding the introduction of a provision in the GBER, that allows for granting State aid in the above mentioned example, it is still not possible to fully apply simplified costs options due to differences in catalogues of cost that can be financed under certain earmarking of aid and under cohesion policy.

- Difficulties of interpretation of regulations on State aid impeding implementation of projects co-financed under cohesion policy

Despite the Commission's efforts in the area of proper understanding of State aid provisions - expressed both in the elaboration of the Guidance on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, GBER – FAQ or Commission's replies on ECN WIKI platform, still many issues remain unspecified due to the fact that the rules are vague.

According to the Framework for State aid for research and development and innovation, in the case of collaborative projects carried out in cooperation between enterprises and research organisations (or research infrastructures), the Commission considers that indirect aid is not granted to the participants State due to favourable cooperation condition, for example if Intellectual property rights resulting from the project reflect the contribution of their work or mutual interests. The wording relating to the general notion of mutual interests of the parties raises implementation problems in the case of introduction, at the level of an agreement, some legally-advanced instruments in the management of intellectual property rights, which lead to inequalities of the parties giving rise to the consideration of whether or not the effective cooperation formula is maintained within the scope of the framework. The absence of Commission's practice in this regard results in the difficulty of making a proper assessment.

Pre-commercial procurement gives the opportunity, after fulfilling certain conditions, for awarding the contract without acknowledging that there is State aid. It is difficult to assess the terms of delivery of this type of contract by the contracting entity in the case of intellectual property rights and the conditions for compensation for intellectual property rights, comparing the requirements of the framework and the EC Communication on pre-commercial procurement. In RDI projects, there is often a compensation that allows research organizations / infrastructures to benefit fully from economic benefits or which constitutes marketable remuneration for shifting between economic and non-economic ownership of assets and thus offsetting the detriment of non-economic activity. This issue raises practical problems in implementation.

Another issue that increases the risk of questioning the correctness of the aid is verification of the ban on relocation as defined by the regional investment aid regulations. This verification is limited by the powers and capabilities of the bodies responsible for granting aid as regards verifying the claims submitted by applicants in this regard.

Practical problems are also caused by granting regional investment aid in research projects in excluded activities, where the project is carried out by the entity performing excluded activities, eg primary production of agricultural products, but intends to carry out research works according to the new, in relation to the main activity, code of the activity (in the area of research activities) of an enterprise.”

#### **Member State 24**

MS24 agrees that there is a need for better harmonization and more simplification in the matter

of controls, in order to avoid duplications and reduce administrative burdens on both public authorities and beneficiaries.

However, MS24 does not agree that the best solution could be the ones proposed, namely: "either by including a specific regulation for ESIF co-financed projects in the General Block Exemption Regulation, with flexible conditions, or by excluding from the monitoring proceedings those co-financed aid schemes which have already been audited by ESIF authorities" as proposed. Simplification, streamlining and reduction of administrative burden could be better achieved by increasing synergies and cooperation in the respective regulatory framework (i.e. harmonizing the periods for controls) as well as of the control activities carried out by the different Commission's Services (in primis DG REGIO and DG COMP).