



# **The General Block Exemption Regulation n°651/2014 GBER Amended by regulations 2017/1084, 2020/972 and 2021/1237**

**Jean-Pierre Bove**  
**External State aid Expert**

# GBER in context

- **Before 2001 no regulation** – all aids have to be notified by MS to the EC (except “de minimis aids” created in the 1992 EC notice on SME aid)
- **First 4 regulations in 2001** : SME aid, Regional Aid, Training aid, de minimis aid
- **First GBER adopted in 2008** (regulation n°800/2008) to regroup all regulations (Regional, SME, Training) and create new categories of aid exempted (RDI...)
- **Second GBER (651/2014) adopted in 2014** resulting from the 2012 State Aid Modernization (**SAM**) reform undertaken by the European Commission to improve state aid control and to simplify it.
- **The SAM objectives:**
  - Decentralization of State aid control
  - Small % of aid under the EC control (by notification)
  - Large % under the control of MS (by exemption)
  - Monitoring, *ex post* evaluation and transparency
  - Target: **90% of all aid measures could come under the GBER**
  - **Regulation entered into force on July 1 2014 ....**
  - **... until 31/12/2020** date originally set out in the 2014 regulation  
....Until **31/12/2023** After 2020 2nd GBER amendment

## GBER in context (2)

- **1<sup>st</sup> amendment regulation (2017/1084)** adopted in June 2017 - regulation's amendments entered into force retroactively at the same date (July 1 2014)  
-> **positive retroactivity : Aid schemes adopted before can benefit from the more favourable provision**
- Ad hoc aid and aid schemes granted until **9/7/2017** on the basis of the 2014 GBER remain compatible -> **no unfavourable retroactivity Aid schemes adopted before are not affected by the less favourable provisions of the regulation**
- **2<sup>nd</sup> amendment regulation (2020/972)** adopted in July 2020 to extend the period of application of the Regulation until the **end of 2023**
  - **Regional Aids** -> Extension of the period of application of the **regional aid maps** until the **end of 2021**
  - undertakings which became **undertakings in difficulty** as a consequence of the **COVID-19 outbreak from 1 January 2020 to 30 June 2021** remain eligible under GBER
- **3<sup>rd</sup> amendment regulation (2021/1237)** adopted in July 2021 to complete the GBER with **new categories of aid** (or modified):
  - Aid to **SME in EAFRD / LEADER context**
  - Aid to **undertakings in European Territorial Cooperation (ETC) projects**
  - **R&D projects** cofinanced under Horizon 2020 / Horizon Europe
  - **Electricity charging facilities**
  - **Fixed Broadband networks – 4G / 5G mobile networks**
  - Cofinancing **INVEST EU financial products**
- **New amendment 2022**

## What is indicatively **excluded from the scope?**

- Some sectors (ex. steel coal for regional aid)
- Some schemes (ex. budget > 150 M€)
- Some beneficiaries (ex. enterprises in difficulty **before Covid**)
- Non-transparent aid (ex. GGE calculation non possible)
- Measures exceeding certain thresholds (ex. 15 M€ environment)
- Internal market violations (ex. Export subsidies)
- Aids that do not produce an incentive effect (ex. Individual aid)
- Aids that do not respect cumulation principles
- Regional aid to large companies in 107(3)(c) areas except for new activities

GBER AID CATEGORIES Rgt 651/2014 & Rgt 2017/1084	ELIGIBILITY FOR GBER SUPPORT												
	AGRICULTURE PRODUCTION	FISHERY & AQUACULTURE	AGRI-FOOD INDUSTRY	EXPORT	UNDERTAKING IN DIFFICULTY	Undertaking Subject to recovery decis*	COAL	STEEL	SHIPBUILDING	TRANSPORT	FINANCIAL INSURANCE HEAD OFFICES ...	ENERGY GENERATION AND DISTRIBUTION	SYNTHETIC FIBRES
REGIONAL INVESTMENT AID (C)	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO
REGIONAL INVESTISSEMENT AID (A)	YES	YES	YES	NO	NO	NO	NO	NO	NO	YES	NO	YES	NO
REGIONAL OPERATING AID (A)	YES	YES	YES	NO	YES	NO	NO	NO	NO	YES	NO	YES	NO
INVESTISSEMENT AID TO SMEs	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
CONSULTANCY & FAIR - SMEs	YES	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
RISK FINANCE	YES	YES	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
START UP	NO	YES	YES	NO	YES	NO	YES	YES	YES	YES	YES	YES	YES
ENVIRONMENT	YES	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
R & D & I	YES	YES	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
INNOVATION AID FOR SME'S	YES	YES	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
TRAINING AID	YES	YES	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
DISAVANTAGED WORKERS	YES	YES	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
WORKERS WITH DISABILITIES	YES	YES	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
NATURAL DISASTER DAMAGE	NO	NO	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
SOCIAL AID REMOTE REGIONS	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
BROADBAND INFRASTRUCTURES	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
CULTURE & HERITAGE CONSERVAT°	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
SPORT INFRASTRUCTURES	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
LOCAL INFRASTRUCTURES	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
PORTS	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES
AIRPORTS	NO	NO	YES	NO	NO	NO	YES	YES	YES	YES	YES	YES	YES

Except Enterprises in  
difficulty caused by Covid  
between 1/1/20 &  
30/6/21

# Conditions for exemption [1]

- Aid & costs expressed **before tax**, discounted to moment of granting & supported by documentary evidence
  - **2017/1084 amendment** :
    - « *The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013* »
- Aid must be **transparent**: i.e.
  - **Grants and interest rates subsidies**
  - **Loans with Gross Grant Equivalent (GGE)** on basis of reference rates and with security
  - **Guarantee with GGE calculation** :
    - based on methodology notified in advance [for SMEs on the basis of safe harbour premiums as laid down in the Notice on aid in the form of guarantees 02/08] and accepted by the EC
    - **OR** on the basis of safe harbour premiums (notice 02/2008)
  - **Capped fiscal measures.**
  - **NB: No GGE needed for risk finance (art.21) start up (art.22) energy efficiency projects (art. 39) and regional urban development (art. 16) aid measures**

## Conditions for exemption [2]

- **Non-transparent aid:**
  - **Capital injection**, unless the entire amount is considered as aid – **No GGE for capital injection**
  - **Passed-on aid** (in case of two-level schemes) without allocation methodology, with the exception of risk finance instruments and Articles 38 and 39 (energy efficiency fund)
    - The advantage to the final beneficiaries must be quantified *ex ante* and precisely

# Notification thresholds for individual aid

## EXAMPLES:

- **SME investment:** EUR **7.5** m/per undertaking/per project
- **Research infrastructure:** EUR **20** mn per infra.
- **Training:** EUR **2** mn per project
- **Innovation** aid for SMEs: EUR **5** m/per undertaking/per project
- Aid for **innovation clusters:** EUR **7.5** m/cluster
- **Regional urban development:** EUR **20** mn
- **Environmental** investment: EUR **15** mn per undertaking/per project;
- **Broadband infrastructure:** EUR **70** m/per project
- Investment aid for **local infrastructure** EUR **10** mn **or** the total costs > EUR **20** m/project



## Incentive effect [1]

- **For aid schemes exempted of notification under GBER,** there is an incentive effect, if they apply in **writing** before project starts, providing certain information:
  - **1) Undertaking name and size** (Small, Medium or Large)
  - **2) Project description** including its start and end dates
  - **3) Location** of the project
  - **4) List of project costs**
  - **5) Type of aid** (grant, loan, guarantee, repayable advance, equity injection or other)
  - **6) Amount of public funding needed** (the total amount coming from either national budgets, ESIF, and from directly managed EU funds)

## Incentive effect [2]

- The **following categories are presumed to have an incentive effect** as long as the specific conditions listed in the respective articles are complied with:
  - **Regional operating aid**
  - **Regional urban development aid**
  - **Aid to ETC projects**
  - **Marie Curie Slodowska projects & cofounded teaming actions (H2020 projects)**
  - **INVEST EU financial products**
  - **Aid to projects EAFRD/LEADER** - (Community-Led Local Development **CLLD** or European Innovation Partnership for agricultural productivity and sustainability **EIP** operational group projects)
  - Aid for **access to finance for SMEs**
  - Aid for the recruitment of **disadvantaged workers**
  - Aid for **disabled workers**
  - Aid in the form of **reduction in environmental taxes**
  - Aid to compensate damage from **natural disasters**
  - **Social aid for transport**
  - **Aid for culture and heritage conservation**

## Cumulation rules

- **Before cumulation**, each public funder must respect individual rules (e.g. aid scheme condition)
- **No cumulation rule for the first aid**; only for the second and the following
- **Ceilings apply to aid from all sources** which meet the 5 criteria of the concept of State aid
- **For different eligible costs**, multiple awards of aid under Regulation allowed
- **For same eligible costs** no cumulation with other aid (within or outside the GBER) or EU aid **if highest ceilings are exceeded**
- **Cumulation between aid scheme and “de minimis” aid** on the same eligible costs, shall respect aid scheme ceiling

## Transparency

- EU States **to publish** within **6 months** after the granting, decision key information on a single website, including the name of beneficiaries and aid amounts:
  - Information on **each scheme exempted of notification** on the basis of GBER
  - Information on **individual awards of > EUR 500,000**, with the exception of SMEs in risk finance and regional urban development projects that have not carried out any commercial activity and for which the EU State can waive the transparency requirement
    - > Probably EUR **100,000** in the next GBER 2022 amendment

# Monitoring

- **No systematic control of information sheets by EC**
- The Commission shall regularly monitor the implementation of the Regulation
  - Sector
  - Budget
  - Beneficiaries
  - Duration
  - Novelty issues
  - Cumulation
- **Controls are carried out** through exchanges of letters with Member States, and management authorities
- **In ESF procedures**, checks are the most frequent; they concern compliance with the rules of the exempted aid scheme used.

## **Withdrawal** of the benefit of the GBER

- **Aid granted without fulfilling GBER condition is not legal**
  - Excepted if one of the 5 state aid criteria is not met
  - Excepted if aid can be granted on “de minimis” regulation
  - Except if SGEI regulation is respected (or agriculture / fisheries regulation)
- Where MS grant aid without fulfilling the conditions of the GBER, the Commission may ask notification of all or some of the future aid measures adopted by the MS concerning in particular certain beneficiaries or certain granting authorities
- **any aid granted illegally must be repaid**

# GBER aid categories (58)

SECTION	GBER ARTICLES	AID CATEGORIES	SECTION	GBER ARTICLES	AID CATEGORIES
SECTION 1	13 - 14	REGIONAL INVESTMENT AID	SECTION 7	36	EXCEEDING STANDARDS INVESTMENTS
	15	REGIONAL OPERATING AID		36 A	ELECTRICITY CHARGING FACILITIES
	16	REGIONAL URBAN DEVELOPPEMENT AID		37	EARLY ADAPTATION TO FUTURE UE STANDARDS
SECTION 2	17	INVESTMENT AID TO SMEs		38	ENERGY EFFICIENCY MEASURES
	18	CONSULTANCY IN FAVOUR OF SMEs		39	ENERGY EFFICIENCY IN BULDINGS - FINANCIAL INSTR.
	19	SMEs PARTICIPATION IN FAIRS		40	HIGH EFFICIENCY COGENERATION
	19 A	SMEs in CLLD and EIP (EAFRD)		41	ENERGY FROM RENEWABLE SOURCES
	19 B	LIMITED AMOUNTS OF AID to SMEs in CLLD and EIP		42	ELECTRICITY RENEWABLE SOURCES
SECTION 2 BIS	20	PARTICIPATION IN ETC PROJECTS		43	SMALL SCALE INSTALLATIONS
	20 A	LIMITED AMOUTS OF AID FOR PARTICIPATION ETC		44	TAX REDUCTIONS
SECTION 3	21	RISK FINANCE AID		45	CONTAMINATED SITES
	22	START-UPS		46	EFFICIENT DISTRIC HEATING & COOLING
	23	ALTERNATIVE TRADING PLATFORMS IN SMEs		47	WASTE RECYCLING
	24	SCOUTING COST		48	ENERGY INFRASTRUCTURES
SECTION 4	25	R&D PROJECTS		49	ENVIRONMENTAL STUDIES
	25 A	SEAL OF EXCELLENCE QUALITY LABEL	SECTION 8	50	NATURAL DISASTERS
	25 B	MARIE CURIE ACTIONS & ERC PROOF OF CONCEPT	SECTION 9	51	TRANSPORT FOR RESIDENTS OF REMOTE REGIONS
	25 C	COFUNDED R&D PROJECTS	SECTION 10	52	FIXED BROADBAND NETWORKS
	25 D	TEAMING ACTIONS		52 A	4G 5G MOBILE NETWORKS
	26	INVESTMENT AID FOR RESEARCH INFRASTRUCTURES		52 B	PROJECTS COMMON INTEREST IN HD INFRASTRUCTURE
	27	INNOVATION CLUSTERS		52 C	CONNECTIVITY VOUCHERS
	28	INNOVATION AID FOR SMEs	SECTION 11	53	CULTURE
	29	PROCESS AND ORGANISATIONAL INNOVATION AID		54	AUDIOVISUAL WORKS
	30	R&D AID IN FISHERY & AQUACULTURE	SECTION 12	55	SPORT INFRASTRUCTURES
SECTION 5	31	TRAINING AID	SECTION 13	56	LOCAL INFRASTRUCTURES
SECTION 6	32	RECRUITMENT OF DISADVANTAGED WORKERS	SECTION 14	56 A	REGIONAL AIRPORTS
	33	EMPLOYMENT OF WORKERS DISABILITIES	SECTION 15	56 B	MARITIME PORTS
	34	ADDITIONNAL COSTS WORKERS WITH DISABILITIES		56 C	INLAND PORTS
	35	ASSISTANCE TO DISADVANTAGED WORKERS	SECTION 16	56 D	INVEST-EU COMMON RULES
				56 E	COFINANCING INVEST-EU FINANCIAL PRODUCTS
				56 F	INTERMEDIATED FINANCIAL PRODUCTS - INVEST EU

**NB:** In regional aid areas (A or C)  
investment aid to SME can be granted on  
the basis of regional aid (art 13 to 16)  
which have more advantageous aid rates

# Investment aid to SMEs (art 17)

- **Eligible costs :**

- **Investment** in tangible and intangible assets

**And**

- **wage costs of employment** directly created by the investment project, (2 years period)

- **5 Eligible investments:**

- Setting up a **new establishment (creation)**
- **Extension** of an existing establishment
- **Diversification** of the output of an establishment into new additional products
- **Fundamental change** in the overall production process of an existing establishment;
- **acquisition** of the assets belonging to an establishment, where the following conditions are fulfilled :
  - establishment has closed or would have closed had it not been purchased;
  - assets are purchased from third parties unrelated to the buyer;
  - transaction takes place under market conditions



## Investment aid to SME (2)

- **Aid intensity :**
  - **20** % for small enterprises
  - **10** % for medium size enterprises
- **Conditions :**
- **Intangible assets conditions :**
  - used exclusively in the **establishment** receiving the aid;
  - regarded as **amortizable** assets;
  - **purchased under market conditions** from third parties unrelated to the buyer;
  - included in the assets of the undertaking for **3 years**;
- **Employment conditions:**
  - created within **3 years** of completion of the investment;
  - net increase in the number of **employees**
  - maintained during **3 years**



# Consultancy & participation in fairs - SMEs (Art. 18 & 19)

## AID FOR CONSULTANCY in favour of SMEs

- Aid intensity :
  - **50 %** aid for SMEs (No increased ceiling for regional aid areas)
- Eligible costs : Costs of consultancy services provided by external consultants
- **Excluded:** continuous or periodic consultancy activity ; usual operating costs (e.g. routine tax consultancy services, regular legal services or advertising)

## AID TO SMEs FOR PARTICIPATION IN FAIRS

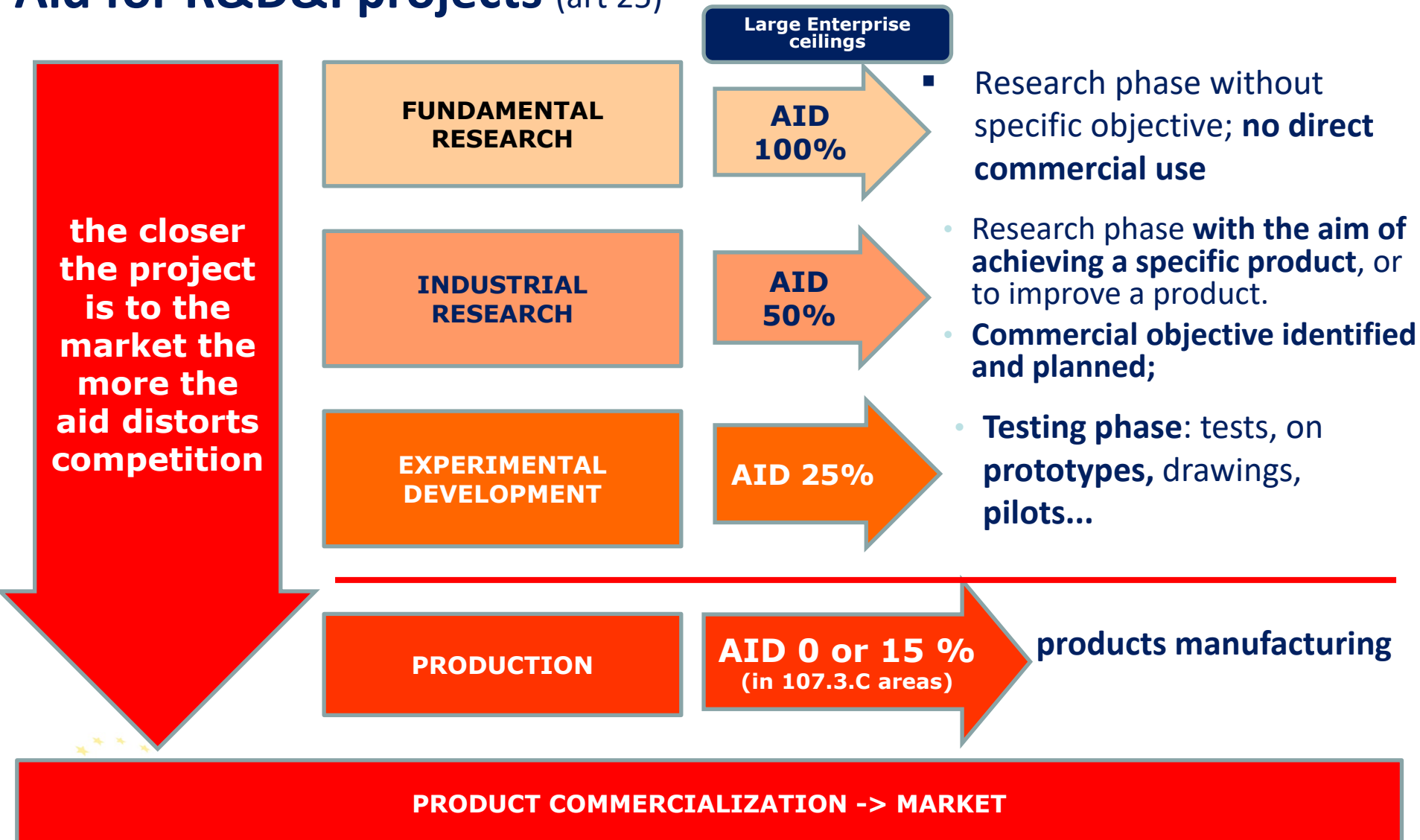
- Aid intensity :
  - **50 %** aid for SMEs (No increased ceiling for regional aid areas)
- Eligible costs :
- costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.

# Aid for Start-ups (Art. 21)

- **Definition:** Small enterprises **up to 5 years** following their registration which:
  - have not taken over the activity of another enterprise
  - have not yet distributed profits
  - Is an Unlisted company
  - and have not been formed through a merger
- **No incitativity rule - No eligible costs - No ceilings**
- **Form of aid: GRANTS – LOANS – CAPITAL INVESTMENTS - GUARANTEES**

FORM OF AID	SMALL ENTERPRISE			SMALL INNOVATIVE ENTREPRISE		
	normal areas	107.3.C areas	107.3.A areas	normal areas	107.3.C	107.3.A
10 years <b>LOANS</b>	€ 1 M	€ 1,5 M	€ 2 M	€ 2 M	€ 3 M	€ 4 M
5 to 10 years LOANS	€ 1 to 2 M	€ 1,5 to 3 M	€ 2 to 4 M	€ 2 à 4 M	€ 3 to 6 M	€ 4 to 8 M
5 years LOANS	€ 2 M	€ 3 M	€ 4 M	€ 4 M	€ 6 M	€ 8 M
10 years <b>GUARANTEES</b>	€ 1,5 M	€ 2,25 M	€ 3 M	€ 3 M	€ 4,5 M	€ 6 M
5 to 10 years GUARANTEES	€ 1,5 to 3 M	€ 2,25 to 4,5 M	€ 3 à 6 M	€ 3 to 6 M	€ 4,5 to 9 M	€ 6 to 12 M
5 years GUARANTEES	€ 3 M	€ 4,5 M	€ 6 M	€ 6 M	€ 9 M	€ 12 M
<b>GRANTS</b>						
or CAPITAL INVESTMENTS	€ <b>0,4 M</b>	€ <b>0,6 M</b>	€ <b>0,8 M</b>	€ <b>0,8 M</b>	€ <b>1,2 M</b>	€ <b>1,6 M</b>
or GGE of LOAN or GUARANTEE	GGE	GGE	GGE	GGE	GGE	GGE

# Aid for R&D&I projects (art 25)



# Aid for RDI projects (2)

- **Eligible costs** : to the extent and for the period used for the project
  - **personnel costs**: researchers, technicians and other supporting staff
  - costs of **instruments and equipment**
  - **buildings and land costs**
  - costs of **contractual research, knowledge and patents**
  - costs of consultancy and equivalent services
  - **additional overheads** and other operating expenses
  - feasibility studies
  
- **Aid intensities**:

TYPES OF R&D&I PROJECTS	LARGE ENTERPRISE	MEDIUM ENTERPRISE	SMALL ENTERPRISE	WITH EFFECTIVE COLLABORATION
FUNDAMENTAL RESEARCH	100	100	100	100
INDUSTRIAL RESEARCH	50	60	70	+ 15pts < 80%
EXPERIMENTAL DEVELOPMENT	25	35	45	+ 15pts < 80%
FEASABILITY STUDIES	50	60	70	+ 15pts < 80%

# Innovation aid for SMEs (Art. 28)

## Eligible costs:

- costs for obtaining, validating and defending **patents** and other **intangible assets**;
- costs for **secondment of highly qualified personnel** from a R&D organization or a large enterprise, **working on research, development and innovation** activities in a newly created function within the beneficiary and not replacing other personnel;
- costs **for innovation advisory and support services**;

## Aid intensities:

- **50%** without limitation
- **for innovation advisory and support services: 100 %** if aid is limited to € **200 000** per undertaking within any **3 year period**

-> **NB** *it is not a de minimis aid (even if it looks like)*

# Aid for Cooperation in ETC projects (Art. 20)

- **Beneficiaries:**
  - All undertakings participating in ETC project (before 2021 GBER limitation to SME)
- **Aid intensity : -> applicable cofinancing rates of ESIF regulations**
  - **2014-2020** CPR 1303/2013 article **120**
    - **85 %**
  - **2021-2027** new CPR 2021/1060 article **112.4** & Rgt 2021/1059 art. **13**
    - **80% - 85%**
  - Before 2021 GBER amendment -> 50% max.
- **Eligible costs :**
- **Cooperation costs** incurred by undertakings participating in the European Territorial Cooperation projects
  - **organisational cooperation** (inc. cost of staff linked to the cooperation project)
  - **advisory and support services** inked to cooperation and delivered by external consultants
  - **travel expenses**, costs of equipment and investment expenditure directly related to the project and depreciation of
  - **tools** and **equipment** used directly for the project.

NB: See also art **20.a** -> Limited amount of aid -> **20 000 €** / project / undertaking

# SME definition (Annexe 1 GBER)

- Enterprise + **2** cumulative criteria:

- **1) Staff headcount**  
Up to **249** persons

**AND**

- **2) Financial thresholds**  
Annual turnover < **50** M€  
**OR**  
Annual balance sheet < **43** M€

**Art. 1** « *An enterprise is considered to be **any entity engaged in an economic activity**, irrespective of its legal form "*



- Undertaking loses SME status if **1** criterion is exceeded for 2 consecutive years
- Undertaking becomes an SME if **both** criteria are met for 2 consecutive years



## SME data

Category	Employees	AND	Turnover [ € ]	OR	Balance sheet [ € ]
Small	< 50		10 mn.		10 mn.
Medium	< 250		50 mn.		43 mn.

## Types of enterprises

- **Autonomous:** < **25%** capital or voting rights
- **Partner relationship:** > **25%** of capital and up to **50%** of voting rights
- **Linked relationship:**  
> **50%** of voting rights  
or equivalent control :
  - by the right to appoint or remove a majority of the members of the administrative, management or supervisory;
  - By dominant influence pursuant to a contract or a provision of the Articles of Association;
  - By an agreement with other shareholders providing majority voting rights

-> Including such relations exercised by physical person (ex. shareholders) or group of physical person acting jointly (if enterprises activities are in the same relevant market or in adjacent markets).

## Exceptions

- **Autonomous:** >**25%** and up to **50%** of capital or voting rights if control is held by:
  - public investment corporations, business angels, provided that the investment is < € **1,25** mn
  - universities, not profit centres, institutional investors
  - autonomous local authorities with annual budget < € **10** mn and < **5000** inhabitants

**No SME** if >**25%** of capital or voting rights is controlled by State or public bodies

# Calculations

## Autonomous < 25%

Calculation of data using **only** employees and financial data from the annual account **of the applicant company**  
-> **no consolidation**

## Partner relationship 25 – 50%

Calculation of data **adding the proportion** of the other enterprises' employees and financial data to the account of the applicant company  
-> **proportional consolidation** of all partner enterprise data situated immediately upstream or downstream from it

## Linked relationship > 50%

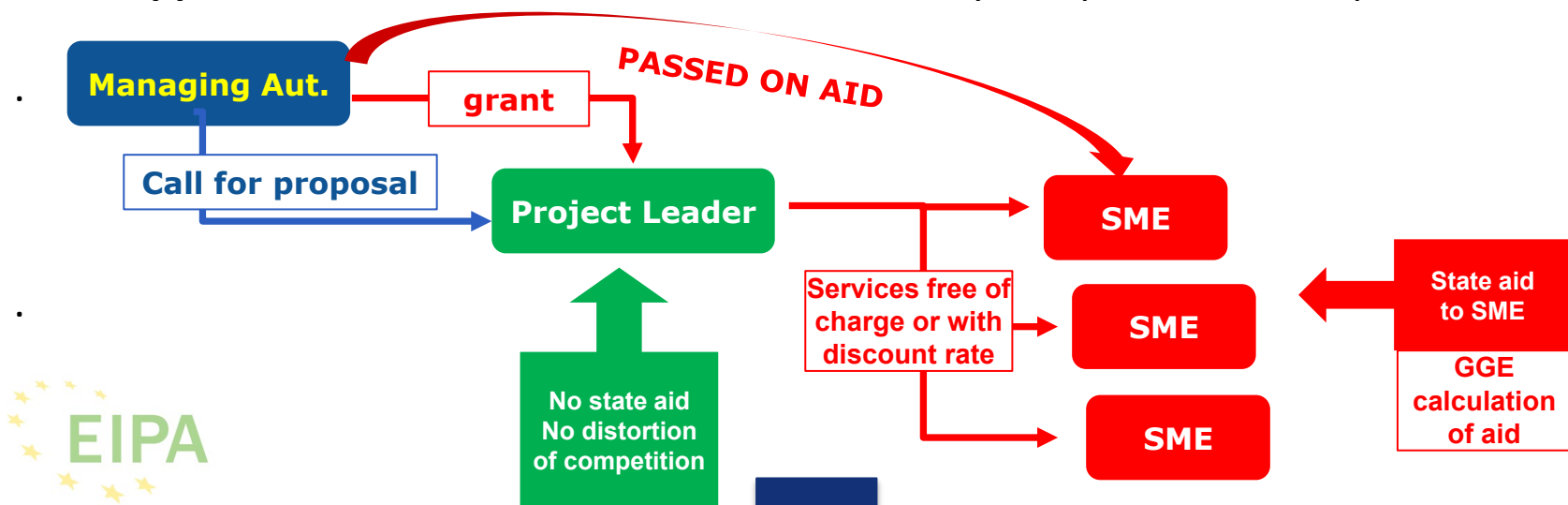
Calculation of data adding 100% of data of all **linked enterprises**  
-> **total consolidation** of all linked enterprises without limitation

## Passed on Aid – Transparent intermediary

- In the case of a **collective operation** with a project leader who carries out the action for the benefit of several companies, aid may be paid to the leader, excluding State aid, in compliance with the principle of the transparent intermediary mentioned in the framework for State aid for R&D (§ 2.1.2 point 22),

### 3 criteria must be respected

- **1- transparent selection** of the operator by the aid manager, e.g. by a call for proposals, or the publication of the aid measure on the Internet;
- **2- full passing on of the aid** received by the operator to the beneficiary companies in the form of a price reduction or free service;
- **3- application of state aid rules** to the beneficiary companies of the operation





# Thank you!

[Jpbove-avocat@face.eu](mailto:Jpbove-avocat@face.eu)

