European Commission

General Block Exemption Regulation (GBER)
Frequently Asked Questions
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Competition

State funding that meets the criteria established in Article 107(1) TFEU constitutes State aid. As a general rule, State aid must be notified to and cleared by the Commission before it is granted. The General Block Exemption Regulation (hereafter the GBER or the Regulation) exempts Member States from this notification obligation, as long as all the GBER criteria are fulfilled. The Regulation simplifies the procedure for aid-granting authorities at national, regional and local level. It allows them to provide measures ranging from job creation and boosting competitiveness to measures that create a favourable environment for the Small and Medium Enterprises (hereafter SMEs).

The new GBER significantly extends the possibilities for Member States to grant "good aid" to companies without prior Commission scrutiny, simplifies the award of State aid and reduces the duration of processes for aid beneficiaries. It also introduces ex-post requirements for Member States such as the requirement to evaluate large aid schemes and to ensure greater transparency on aid awards.

The new GBER is a cornerstone of the State Aid Modernisation (SAM) agenda (see IP/12/458), which is a broad reform of State aid rules aimed at facilitating sustainable, smart and inclusive growth, focusing on cases with the biggest impact on the internal market and streamlining the rules to adopt faster and better informed decisions. The review of the GBER contributes to all SAM objectives, with a particular focus on simplification and dealing as a priority with cases that matter most for competition in the internal market. In addition, the GBER imposes conditions which aim to ensure that the beneficiary will indeed undertake the project or activity which he would not have undertaken had the aid not been granted (incentive effect). Lastly, the Regulation will lead to increased transparency, allowing all stakeholders to have a better grasp of the aid that has been granted and of its impact.

Member States will have a major role to play in designing and implementing schemes without prior notification. The purpose of this document – which is in fact a compilation of questions mainly received from the national administrations – is to offer guidance concerning the implementation of the GBER. This FAQs document does not intend to tackle all the interpretation questions that may arise, only the most common ones raised so far.

This document is a working paper prepared by the Commission services and is not binding on the European Commission as an institution. The FAQ follow the structure of the GBER and all references to Articles and recitals relate to the GBER unless otherwise stated.

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1. **Chapter I - COMMON PROVISIONS**

Article 1

1. **In order to assess whether an aid scheme reaches the threshold for evaluation foreseen in Article 1(2)(a), i.e. "average annual State aid budget exceeding EUR 150 million", what is the correct assesment method for the aid component in the cases of aid comprised in loans, in guarantees and in the case of tax schemes?**

Only the State aid component of the budget is relevant for the evaluation threshold of Article 1(2)(a). Article 5 GBER on the transparency of aid states that the "Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without any need to undertake a risk assessment".

For calculating the aid element comprised in loans, two provisions are relevant: Article 5(2)(b) GBER and the Communication from the Commission on the revision of the method for setting the reference and discount rates - 2008/C 14/02.

For calculating the aid element comprised in guarantees, two provisions are relevant: Article 5(2)(c) GBER and the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees - 2008/C 155/02.

In the case of a tax scheme, the budget corresponds to the estimated tax loss, per year, for all aid instruments contained in the scheme.

2. **What is the relation between the EUR 150 million thresholds set in Article 1(2)(a) (obligation to provide an evaluation plan) and Article 4(1)(v) - notification threshold for operating aid for energy produced from renewable energy sources?**

According to Article 1(2) and recital (8) of the GBER, in view of their greater potential impact, certain schemes with an annual budget exceeding EUR 150 million will be subject to State aid evaluation with the obligation for the Member State to submit an evaluation plan. The evaluation aims at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved and should provide indications on the impact of the scheme on competition and trade. In contrast to that obligation, the particular provision of operating aid for renewable energy in Article 4(1) (v) GBER, obliges Member States to notify to the Commission State aid exceeding EUR 150 million per year. This is to be calculated taking into account the combined budget of all schemes falling under Article 42 GBER, per Member State.

Therefore the two thresholds have different purposes. The first threshold concerns the expected average annual budget for a scheme within certain categories of the GBER that triggers a requirement of evaluation of such large scheme, and for which an evaluation plan has to be submitted within twenty working days after the scheme was put into effect. The second threshold refers to the expected aggregated annual aid to be granted by a Member State under all schemes falling under Article 42 that, if exceeded, triggers an ex ante notification obligation to the Commission, before putting into effect the aid measure.

The scheme concerning energy produced from renewable energy sources leading to a budget exceeding EUR 150 million will have therefore to be notified individually to the Commission. In reason of their different application, an operating aid scheme

concerning energy produced from renewable energy sources and that is subject to the evaluation requirement, will also necessarily be caught by the notification obligation in Article 4(1)(v).

3. **Article 1(3) of the GBER states that aid can be granted to (a) the fishery and aquaculture sector and (b) the primary agricultural production sector for "aid for research and development, innovation aid for SMEs". Can the provisions of Section 4 – Aid for research and development and innovation be used to support relevant activities in (a) the fishery and aquaculture sector and (b) the primary agricultural production sector?**

As long as there is no distinction within Article 1(3) a and b as to the type of aid or instrument, all Articles within the Section 4 are applicable to aid in the fishery and aquaculture sector. Except for Article 30 that deals with a particular type of aid to research organisations for undertaking studies in the fisheries and aquaculture sector, all other Articles of Section 4 apply to the primary agricultural production sector as well.

4. **What is the relevance of the GBER for regional aid in view of the exclusion enshrined in Article 1(3)(e)?**

Article 1 defines the scope of the GBER. According to Article 1(3)(e), the GBER does not apply to the certain categories of regional aid listed in Art 13. Article 13 excludes the application of Section 1 (Regional aid) of the GBER to certain aid measures listed there-in, but it does not preclude that such aid could not at all be exempted under another section of the GBER, provided it fulfils both general and specific conditions of the GBER.

5. **Article 1(4)(c) prohibits the granting of aid to undertakings in difficulty and Article 2(18) defines such undertakings. In case the aid beneficiary is a daughter company of the group, does it mean that the aid grantor has to control the whole concern? And if e.g. another daughter of the concern is in difficulty then no aid can be granted to the group and other companies belonging to it?**

In accordance with the case law, an undertaking is defined as a single economic entity having a common source of control. Therefore, as long as the group acts as a single economic unit, it shall be considered as one undertaking and the economic situation of all the legal persons part of the group shall be considered when granting aid under the GBER. Otherwise, a company that is in difficulty might bypass the GBER prohibition of aid to enterprises in difficulty, by simply setting up a wholly owned subsidiary and transferring its liabilities to that company.

6. **Can a State aid scheme impose as a condition of eligibility requirements relating to the headquarters of potential aid beneficiaries? Could the scheme require that the potential beneficiary is registered within that Member State?**

The rationale of the Article 1(5) GBER originates from the basic EU freedom of establishment for nationals of a Member State in the territory of another Member State as stated in the Article 49 TFEU. The same freedom of establishment extends

to legal persons that may set up branches in any other Member States and are therefore free to carry out their activity from different Member States, across the internal market. Any restrictions to this freedom to set up an establishment and carry out economic activity from that establishment is therefore contrary to the Treaty. Consequently, the provision of State aid should not be designed in such a way that would effectively prohibit undertakings from carrying out their activities in other Member States.

For the same reason, according to the Article 1 (5) (a) GBER, if the aid schemes provides that it is only available for undertakings having their headquarters in a certain Member State, the GBER would not apply. However, the requirement to have an establishment or branch in the aid granting Member State at the moment of payment of the aid is permitted. Therefore, to the extent that the condition to 'be registered' (by means of a branch or an establishment) is a necessary condition for carrying an aided activity in such Member State, it would appear to be coherent with the GBER.

7. **With regard to the Article 1 (5) (a) of GBER what is meant by „the beneficiary that is predominantly established in the Member State"? Could the scheme provide for a requirement that the beneficiary is registered in the granting Member State?**

The provision of State aid by one Member State should not be designed in such a way that would effectively prohibit undertakings from carrying out their activities in other Member States. This could, for example, be done by requiring the beneficiary to achieve a certain part of its turnover in the granting Member States. Also, it would not be allowed under the GBER to make the grant of aid subject to the obligation for the beneficiary to have its headquarters in the granting Member State (or in a certain region or municipality). However, the requirement to have an establishment or branch or activity in the granting Member State at the moment of payment of the aid is permitted. Therefore, to the extent that the condition to 'be registered' is a necessary condition for carrying an activity in such Member State, it would appear to be coherent with the GBER. Otherwise, such requirement would likely infringe internal market rules.

8. **Is it possible to require that a company is formally established in the granting Member State at the time when the application for aid is made?**

The GBER states in Article 1(5) a that a Member State might require that the company has an establishment in its territory at the time of payment of the aid. This cannot be interpreted as also meaning a requirement to have an establishment at the time of application for the aid as it would limit the possibility of companies located outside the granting Member State to apply for an aid and therefore carry out a particular project/investment.

9. **What is the evaluation plan decision procedure under GBER and its possible outcomes?**

Large aid schemes referred to in Article 1(2)(a) of the GBER can be implemented immediately by the Member States. However, for such schemes, the exemption under the Regulation expires six months following their entry into force.

The Member State is required to notify the evaluation plan within the first 20 working days following the entry into force of the scheme. Until a final notification form is adopted by the Commission as an annex to the Implementing regulation No 794/2004, Member States are encouraged to use the provisional supplementary information sheet for the notification of an evaluation plan, published on the DG Competition website. The Commission services will immediately start assessing the completeness and appropriateness of the evaluation plan.

The Commission should receive from the Member State the necessary information to be able to carry out the assessment of the evaluation plan and will request additional information without undue delay allowing the Member State to complete the missing elements for the Commission to adopt a decision.

Following the assessment of the evaluation plan, the Commission could exceptionally adopt a decision prolonging the exemption of the scheme beyond the initial six months.

If the Commission does not adopt a decision on the evaluation plan within the six months period, the scheme will no longer be exempted under the GBER. In this scenario, the concerned Member State will have to suspend its application until the evaluation plan has been approved.

Alternatively, Member States can notify the measure for a detailed assessment of its compatibility under the relevant State aid guidelines. Such assessment will review the whole scheme and the need for an adequate evaluation plan in line with the relevant State aid guidelines.

10. When does the 6 months period referred to in Article 1(2) a begin? Is it 6 months after the evaluation plan has been sent or 6 months from the starting date of the scheme?

The six months period begins from the date when the State aid scheme was put into effect.

11. Are there any short guidelines, practical information on how an evaluation plan subject to notification should be designed?

The Commission Staff Working Document "Common methodology for State aid evaluation" has been published on 28 May 2014 and is available on DG Competition's website http://ec.europa.eu/competition/state_aid/modernisation/state_aid_evaluation_methodology_en.pdf

The Staff Working Document provides guidance and best practices on the drafting of an evaluation plan and provides a description of its key elements. Member States are invited to take this guidance into account as much as possible[1].

Article 2: Definitions

12. What is meant by "without further implementing measures being required" in the definition of an aid scheme (Article 2(15))?

The wording regarding the measures that constitute a scheme for the purposes of Article 2(15) of the GBER is meant to clarify that, in order for a State aid measure to be considered a scheme, the legal basis is detailed enough to determine the

[1] Additional Frequently asked questions about State aid evaluation are available on the DG Competition website: http://ec.europa.eu/competition/state_aid/modernisation/evaluation_faq_en.pdf

group of beneficiaries and under which conditions they may benefit of the aid measures.

13. Does an undertaking subject to "collective insolvency proceeding" as described in Article 2(18)(c) GBER and in point 20 (c) of the Rescue and Restructuring Guidelines automatically qualify as "undertaking in difficulty"?

Article 2(18)(c) of GBER and point 20(c) of the Rescue and Restructuring Guidelines refer to national insolvency proceedings. Thus, it is for the national law to define the conditions under which an undertaking is to be regarded as insolvent. Whenever an undertaking, under this national definition, is (1) subject to collective insolvency proceedings or (2) fulfils the criteria for being placed under such proceedings at the request of its creditors, it shall be regarded as an "undertaking in difficulty" under point 20(c) of the Guidelines.

14. Can an undertaking subject to collective insolvency proceedings - whose continuation of the activity under a restructuring plan is approved and remains under the control of the (commercial) court – and which does not qualify in any other way as a firm in difficulty benefit from other types of aid?

A firm subject to collective insolvency proceedings under national law fulfils the criterion of Article 2(18)(c) and therefore must be assessed as undertaking in difficulty, even if it does not meet any of the remaining criteria of Article 2(18), and thus is excluded from aid granted in application of the GBER. The only aid category available to undertakings in difficulty under the GBER is aid to compensate for damages of natural disasters.

15. It is possible to choose the most favourable criteria among the ones of Article 2(18) of the GBER, or one must consider an undertaking to be in difficulty once at least one of the criteria is met?

According to Article 2(18) of the GBER, an "undertaking in difficulty" means an undertaking in respect of which at least one (emphasis added) of the circumstances described in points (a) – (e) occurs. Therefore, it is not possible to choose an assessment criterion. As soon as a firm fulfils at least one of the criteria of Article 2(18) of the GBER, it must be considered as being in difficulty and thus, pursuant to Article 1(4) c), the undertaking is not eligible for the categories of aid covered by the GBER, with the exception of aid schemes to make good the damage caused by certain natural disasters.

16. What is meant by the term "debt" in the debt to equity ratio referred to in Article 2 (18)(e)(1) of GBER?

The term "debt" should be understood as the book value of short-term and long-term financial liabilities.

17. Within the definition of “start of works” in Article 2(23) what is meant by "commitment that makes the investment irreversible"? Is a clause allowing for unilaternal termination sufficient to make a contract reversible?

‘Start of work’ is either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies. Whether the agreements and payments made on the basis of these agreements can be considered a "first firm commitment" to start the project does not necessarily depend on the formal classification of the agreements in question, but on the terms of those agreements. If contractual obligations make it difficult from an economic

standpoint to abandon the project in a given case, particularly because a considerable sum of money would be lost, work will be deemed to have started. A more detailed examination of the specific circumstances of the case would be needed to see if this is indeed the case.

As most contracts will have a clause allowing for unilateral termination under some conditions, this cannot be a sole factor for determining the nature of the commitment. However, if for instance the termination of that contract entails significant financial losses for the aid beneficiary, the contract may still be considered as a firm commitment to pursue the investment in the absence of State aid.

18. Taking into account the new provision in the Article 2(23) GBER regarding "start of works", can the acquisition of a land which has been acquired before the aid application has been submitted be considered (in total or partially) a financial contribution of at least 25% of the eligible costs pursuant to the Article 14 (14) GBER?

According to the Article 2(23) of GBER buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works. However, this provision does not preclude the possibility to accept the acquired land as own contribution. Article 14(14) GBER provides that the aid beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support. Given the fact that land is eligible cost under the RAG and under the condition this land has been acquired on market terms, it is not considered to be aid and may well be accepted as own contribution in the meaning of the paragraph (38) RAG 2014-20.

19. What is meant by “the relevant lifetime of the investment” in Article 2(39)?

The lifetime of the investment that can be assimilated to the depreciation period in most accounting systems.

20. What is meant by 'transport related infrastructure' in Article 2(45)?

The transport sector is defined in Article 2(45) of the GBER as meaning

"the following activities in terms of NACE Rev. 2:

(a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.32 Taxi operation, 49.42 Removal services, 49.5 Transport via pipeline;

(b) NACE 50: Water transport;

(c) NACE 51: Air transport, excluding NACE 51.22 Space transport."

Therefore, the transport related infrastructure excluded from the scope of application of regional aid under the GBER refers to infrastructure that is needed for and used to provide the transport activities listed in Article 2(45) of the GBER. Aid to the transport sector is subject to special rules and specific guidelines apply. For example, the regional aid provisions of the GBER will not apply to State aid granted to airports and the related airport infrastructure given that this type of aid

is assessed under the recently adopted Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3.)

21. Does the definition of 'transport sector' under the new GBER cover the cruise ship sector?

The transport sector is defined in Article 2(45) of the GBER as "the transport of passengers by aircraft, maritime transport, road or rail and by inland waterway or freight transport services for hire or reward; more specifically the 'transport sector' means the following activities in terms of NACE Rev. 2 (…).

(a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.32 Taxi operation, 49.42 Removal services, 49.5 Transport via pipeline;

(b) NACE 50: Water transport;

(c) NACE 51: Air transport, excluding NACE 51.22 Space transport."

Therefore, all the activities that fall under NACE 50 code are excluded from the scope of application of regional aid under the GBER. Cruise ships would normally fall under the water transport NACE code 50 and would consequently be excluded from regional aid under the GBER.

22. What is meant by "new products" in Article 2(49)? Does a "new product" mean a different NACE classification?

According to Article 2 (49) of the GBER, a "diversification" project is an initial investment if it is "diversification of the output of an establishment into products not previously produced in the establishment". The important condition for qualifying a "diversification" project as an "initial investment" is that the products were not produced in that establishment before the project. However, the "product" is not defined by reference to NACE codes. NACE codes are used for the definition of the „same or similar activity" (Article 2(50) of the GBER). If the activity resulting into the new product falls under a different four digit numerical NACE code, it can also be considered as diversification into a new product. However, not in all cases would the activities resulting into new products have to fall under different four digit numerical NACE codes.

[Example: NACE code C.1089 – Manufacture of other food products n.e.c. If the company was producing soups and broths and now it decides to produce artificial honey, we could consider it a new product, despite of the fact the activities resulting into these products fall under the same NACE codes.]

23. What is meant by "initial investment in favour of a new economic activity" in Article 2(51)?

"Initial investment in favour of a new economic activity" means an investment carried out by an undertaking introducing a new activity, which is not the same or similar activity to the activity previously performed in the establishment. An investment in an existing establishment is not considered initial investment in favour of new economic activity unless it introduces a new activity, which is not the same or similar activity to the activity previously performed in the establishment. Therefore, if the new activity falls under the same four-digit numerical code of the NACE as the activity pursued so far in the establishment , it cannot be considered initial investment in favour of new economic activity. The definition is relevant for regional aid to large enterprises in that the GBER allows for exemption from the notification requirement of such aid only for initial investments in favour of new economic activity of large enterprises in 'c' regions.

24. What is the meaning of "a new establishment" in the context of Article 2(51)?

If a large enterprise sets up a new establishment, which is self-standing and is not just a simple extension of the production capacity of an existing establishment, it could be considered as initial investment in favour of new economic activity.

However, if the investment project cannot be considered as one that is setting up a new establishment, but the project could qualify as a diversification of the existing establishment into a new product, it could fall under the Regional Aid Guidelines 2014-2020[2] (hereafter "RAG"). In that case, the Member State would have to notify such a project to the Commission, and the Commission will assess it on the basis of the RAG.

25. What is meant by a "fundamental" change in the production process? How is it to be distinguished from a non-fundamental change?

Initial investment in the form of a fundamental change in the overall production process of an existing establishment means the implementation of a fundamental (as opposed to routine) process innovation. The simple replacement of individual assets without fundamentally changing the overall production process constitutes a replacement investment which is not eligible for regional investment aid as it does not qualify as a fundamental change of an overall production process, and thus is not considered to constitute an initial investment. The fact of having replaced individual items of equipment by others that are more performing (unless this leads to a fundamental change on the overall production process) would also be considered a non-eligible replacement investment.

26. What is meant by "extension of the capacity of an existing establishment"? Is this to be taken to mean production of a greater volume of all products?

The extension of capacity of an existing establishment means that the existing establishment is put into a situation where it can manufacture more volume of at least one of the products already produced in the establishment, whilst the underlying overall production process is not fundamentally changed.

27. If depreciation of "assets linked to the activity to be modernised" is to include all assets, however peripherally linked they are to production (such as the assembly hall premises, shared lighting etc.), how is the percentage share of these depreciations to be determined in order to be compared against the eligible expenditure? On the basis of the floor surface area of the assembly hall, the percentage use of the machines, the share of sales?

The term assets in the context of initial investments refers both to tangible and intangible assets (see Article 2 (49) (a) and Article 2 (51) (a) GBER). Tangible assets consist of land, buildings and plant, machinery and equipment (see Article 2 (28) GBER).Therefore, the buildings for manufacturing or storing manufactured products are covered by Article 14 (7) 2nd sentence of the GBER if these assets are linked to the activity to be modernised. Member State can carry out a pro rata

[2] Guidelines on regional State aid for 2014-2020, OJ C209, 23.07.2013.

calculation. The GBER does not prescribe the method to be applied by the Member State for that purpose, i.e. the Member State can rely on a bona fide approach that takes into account the specific situation and characteristics of the establishment and activity concerned and normal general depreciation rules.

28. What is meant by "diversification of the activity of an establishment" under the condition that the new activity is not the same or similar activity to the previously performed in the establishment?

According to Article 2(51) of the GBER an investment related to the "diversification of the of the output of an existing establishment" into products not previously produced in the establishment qualifies as "initial investment in favour of new economic activity", if the additional product results from a production activity that falls under a different class (four-digit numerical code) of the NACE Rev.2 statistical classification of economic activities than the activity that was performed before the project in the establishment.

29. Under the old Shipbuilding framework, the definition of ship building covered repair and maintenance of vessels; this framework also exempted smaller vessels under 100gt or less than 365KW in the case of tugs. Do the definitions of ship building under the old ship building framework still apply under the new GBER and if so would it be possible to grant aid to a project that supported the refurbishment and development of infrastructure (quays, docks and workspace) to maintain and repair small vessels under the new GBER?

The GBER does not provide a new definition of "shipbuilding". Therefore, the most recent relevant definitions are provided in the 2011 Framework on State Aid to Shipbuilding[3] According to paragraph 12 of the Shipbuilding Framework, 'ship repair' means the repair or reconditioning, in the Union, of self-propelled commercial vessels. Paragraph 12 of the Framework also defines 'self-propelled commercial vessel'. If a vessel does not fall under the definition of 'self-propelled commercial vessel', its repair can be eligible for regional aid under the GBER. Therefore, as long as the infrastructure is used exclusively for this type of small vessels which do not fall under the definition of 'self-propelled commercial vessel', investments in the infrastructure could be eligible for regional aid granted under the GBER, unless they fall within the transport sector (including related infrastructure), which is excluded in Article 13(a) GBER

Such aid may fall under the scope of Article 56 GBER (local infrastructure), which however excludes port infrastructure.

30. What is meant by "establishment" in the context of an initial investment?

Based on the wording of definitions in Article 2(49) and (51) of the GBER, "establishment" in the context of an initial investment is understood as a production unit, and not a legal entity.

31. What is meant by the „scientific community" in the definition of „research infrastructure" in Article 2(91)?

The term "scientific community" corresponds to the term used in Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a

[3] Framework on State aid for shipbuilding, OJ C364 of 14.12.2011, p. 9-13.

European Research Infrastructure Consortium[4] and relates to any structured or unstructured group or network of persons engaging in a systematic activity to acquire knowledge.

32. Are project feasability studies considered „knowledge transfer" under Article 2(91)? When are knowledge trasfer activities considered as economic or non-economic?

Technical and economic feasibility studies cannot qualify as "knowledge transfer" but may be eligible for aid under the conditions laid down for "feasibility studies".

Insofar as only Small and Medium Entreprises (SMEs) are eligible for aid for obtaining, validating and defending patents and other intangible assets, and as was the case under the previous RDI State aid rules, public research organisations that do not qualify as such cannot benefit from such aid.

The qualification of knowledge transfer activities as economic or non-economic does not depend on the selection process of the recipients but rather on whether those activities are conducted by a research organisation or research infrastructure (or jointly with, or on behalf of other such entities) and all profits from activities are reinvested in the primary activities of the relevant research organisation or research infrastructure (i.e. education for more and better skilled human resources, independent research and development for more knowledge and better understanding, wide dissemination of research results on a non-exclusive and non-discriminatory basis).

33. The term "smart grids" is defined in Article (2) paragraph (130)(a)(v) in GBER. The definition refers to equipment, lines, cables and installations. Are intangible assets related to the infrastructure and essential to its proper functioning also eligible (e.g. software enabling the management and monitoring of the grid and communication between different installations)?

The definition of "smart grids" is provided in Article 2(130)(a)(v). The eligible costs pursuant to Article 48(4) are those investment costs necessary to develop the said infrastructure and may include the costs of software.

Article 4

34. How to proceed in cases where the same entity will implement several projects for which it has received funding under separate contracts which, for example because of the geographical proximity, have economic or technological links? In such a case, will it be necessary to sum up the values of these projects or each of them will be treated separately?

[4] Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community Legal Framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009, p. 1.

The determining factor is whether there were separate investment decisions or all projects are based on one transaction or several inter-linked transactions. If the only linking element is economic or technological synergies it might not be sufficient to conclude that the entire investment is part of one single project. The national authorities are often in a good position to judge whether it is one investment decision or several ones as such projects are subject to a variety of permits (construction, environmental, etc.) from which the initial investment decision becomes clearer.

More detailed rules appy for regional aid.

35. How should we read the notification thresholds for investment aid in Articles 4(1) (bb) and (cc)? Are the two ceillings alternative or cumulative?

The Regulation shall not apply to aid or projects which exceed any of the two thresholds. For example, in order for a local infrastructure project to be covered by the GBER, the aid shall not exceed 10 Mio Euro *and* the overall cost of the project shall not exceed 20 Mio Euro.

Article 5

36. Is aid in the form of "equity" or "semi-equity" considered to be a transparent form of aid?

Aid in the form of "equity" and/or "quasi-equity" is not listed under Article 5 (2) of the GBER as categories of aid that would be considered to be transparent. According to recital 17 of the preamble to the GBER "Capital injections should not be considered transparent aid, without prejudice to specific conditions concerning risk finance and start-up aid."

However, such form of aid would be allowed in the following situations:

-specific provisions of the GBER allow such aid (see the GBER provisions concerning risk finance and start-up aid), or

-the nominal value of the capital injection is itself below the applicable threshold (be it de minimis or the individual notification threshold under the GBER).

In such cases, there is no risk of circumvention of the applicable thresholds, despite the fact that the GGE of the measure cannot be defined ex ante, since the nominal value of the capital injection is itself below the applicable thresholds.

Article 6

37. What is the meaning of the term "incentive effect" in the Article 6 (2) (e) GBER? Are there different tests for different company sizes?

Article 6(1) GBER requires for the aid to have incentive effect in order to qualify for the exemption under the GBER. According to recital 18, aid has insufficient incentive effect where the beneficiary would already engage under market conditions alone in activities or projects. For measures under the GBER, the aid is deemed to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts. Furthermore, the obligatory elements of the aid application are listed in the Article 6(2), which among others requires the description of the type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and denomination of the amount of public funding needed for the project.

In addition to the requirement that the beneficiary has submitted an application for the aid to the Member State concerned before work on the project or activity has started, in the situation of ad hoc aid to large entreprises, the Member State

concerned must verify that documentation prepared by the beneficiary establishes one or more of the conditions set out in points (a) and (b) of Article 6.

38. Article 6(3)(a) states that the regional ad hoc aid is compatible when the beneficiary demonstrates that – without the aid – either the project would not have been carried out in the area or would not have been sufficiently profitable for the beneficiary in the area concerned. Is the project deemed not sufficiently profitable when the return of investment (IRR) is objectively low or when carrying out the investment at that moment does not bring enough profits for the beneficiary - in a wider context?

The notion that the investment would not have been sufficiently profitable for the beneficiary in the area concerned should be understood by analogy to scenario 1 (investment decision) described in the RAG. Consequently, the profitability of the project – also when aid is granted under the GBER – should be evaluated by reference to methodologies which are standard practice in the particular industry concerned, and which may include methods to evaluate the net present value of the project (NPV), the internal rate of return (IRR) or the average return on capital employed (ROCE). The profitability of the project is to be compared with normal rates of return applied by the company in other investment projects of a similar kind. Where these rates are not available, the profitability of the project is to be compared with the cost of capital of the company as a whole or with the rates of return commonly observed in the industry concerned.

39. What are the applicable rules in case of combined regional investment aid and aid for consultancy services granted to a beneficiary in relation to the same project, including the requirements for the presence of incentive effect?

In this respect, we note that regional investment aid under the new GBER can be granted in line with its Article 14, while consultancy aid – for SMEs only – under the Article 18. These types of aid have different scopes and can be granted for different eligible costs. It can thus be considered that while regional aid under Article 14 relates to the physical investment in the project, aid under Article 18 relates to the activity of providing consultancy services for the phase prior to the investment. Consequently, it can be considered that in order to comply with the criteria of Article 6 of the new GBER, and thus to have incentive effect, the beneficiary concerned should have applied for the regional investment aid before the start of works on the – physical – investment project, and in case of an ad-hoc aid it should have also complied with the conditions of Article 6(3)(a) and should have applied for the consultancy aid before signing the consultancy contract. In line with Art. 2(23), it does not seem necessary in such case to have applied for the regional investment aid before the start of the preparatory (consultancy) activities.

40. Is Article 6(2) applicable to both SMEs and large companies under schemes?

Yes, both aid schemes for SMEs and large undertakings shall comply with the incentive effect conditions described in Article 6(2). The provisions in Article 6(3) apply only for ad hoc aid to large enterprises.

41. Does Article 6(5)(h) of the GBER apply to all aid for culture and heritage conservation covered by the GBER ?

Article 6(5)(h) applies to aid for culture and heritage conservation as defined in Article 53. It specifically refers to this Article only and does not apply to Article 54 (Aid schemes for audiovisual works).

42. How is the incentive effect met when aid is granted in the form of interest rate subsidies?

The incentive effect is met if the aid application for an interest rate subsidy is made before start of works and before signature of a legally binding loan contract allowing to finance a part of the project costs. In this case, the signature of the loan with the subsidised interest rate is the aid granting moment. Making a request after this point would not qualify as meeting the incentive effect requirement as the aid would be considered granted at the time of the signature. Therefore, in order to meet the incentive effect, the request should be made before the loan is signed. Investments may not start before such request for aid is made.

In addition to the requirement that the beneficiary has submitted an application for the aid to the Member State concerned before work on the project or activity has started, in the situation of ad hoc aid to large entreprises, the Member State concerned must verify that documentation prepared by the beneficiary establishes one or more of the conditions set out in points (a) and (b) of Article 6.

43. Article 6(2)(c) of the GBER states that the application for aid shall contain certain information, inter alia "location of the project". What is meant under "the location of the project"? How precisely the location has to be specified (e.g. in the town/village or county)? In case the measure includes the visits to foreign trade fairs will the location of the project be the place of the fair?

The location of the project should be as specific as possible, including the town/village if this is known. If aid is given for participation in fairs, the location of the fair shall be mentioned.

Article 7

44. Is Value Added Tax on productive and non-productive assets and services eligible for support under the GBER?

According to Recital (23) GBER, all figures used should be taken before any deduction of taxes or other charges. The principle is that if the Value Added Tax (hereafter VAT) is a real cost in the sense that it cannot be recovered, then it is part of the eligible cost and therefore eligible for support under the GBER. If the VAT can be recovered, is not considered a real cost and therefore shall not be considered as eligible cost under GBER.

45. With reference to Article 7(4) of the GBER which stipulates "where aid is granted by means of tax advantages, discounting of aid tranches shall take place on the basis of the discount rates applicable at the various times the tax advantage takes effect", what is the basis for calculation of the aid element?

Discounting of aid amounts means the calculation of the net present value of each aid tranche (in the case of tax advantages, the aid tranche represents the gross grant equivalent of the tax advantage granted to the undertaking). The discount rate to be used for each such aid tranche will depend on the time when such aid is granted. The rate to be used for discounting purposes is indicated in the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02).

46. What evidence can be adduced to prove that the beneficiary spent the money to finance eligible costs?

According to Recital (23) of the GBER, Member States shall require that the identification of eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary. In addition, pursuant to Article 12 of the GBER, Member States have the obligation to maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in the GBER are fulfilled. Such records should be kept for a period of 10 years. Therefore, in the context of the monitoring exercise on a particular GBER scheme, Member States may be requested to provide to the Commission all the relevant documentation to show that beneficiaries used the aid to finance projects that fulfil all GBER conditions, including the eligible costs.

Article 8

47. Cumulation of aid under GBER with any other State aid in respect of the same eligible costs is acceptable if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under GBER. How to proceed when cumulation refers to aid granted under GBER with aid for which the Commission issued a decision approving some higher intensity than set forth in GBER?

Article 8 refers to cumulation under the GBER. Of course, if the Commission approved higher aid intensities in a Commission decision, such aid is allowed for that specific project. Any aid already granted under the GBER for the same eligible cost will have to be taken into account when giving the additional aid under the decision but the total aid may reach the intensity specified in the Commission decision.

48. How is it possible to comply with the rule on the cumulation of aid for a single project that includes several different categories of eligible costs, falling under several Articles of the GBER?

If there is no overlap between the eligible expenditures under each of the Articles mentioned, the aid intensity for each relevant expenditure may indeed go up to the maximum foreseen for the specific Article.

49. Does the term "public funding" in Article 8(2) mean State aid only or the amount of State aid and EU funding together?

The term "public funding" refers to State aid and EU funding together. Please note that EU funding is to be understood as centrally managed EU funding which is outside the direct and indirect control of a Member State; this notion does not include funding under the Structural Funds (ERDF, Cohesion Fund?). Structural Funds are managed and controlled by the Member States and therefore would qualify as State aid. As a consequence, they would need to be taken into account for the calculation of the notification threshold, aid intensity under the GBER etc.

50. Does "funding rate" in this Article 8(2) mean "aid intensity"?

The term "funding rate" is broader than "aid intensity". It refers to the ratio of the total amount of public funding to the eligible costs for a specific project.

51. How should one understand "the most favourable funding rate laid down in the applicable rules of Union law" in Article 8(2)?

If we take for example a project with eligible costs of 100, that is eligible for aid under both a centrally managed EU funding program and a State aid scheme, with the State aid rules providing for a maximum intensity of 50% while the centrally managed EU funding program provides for a maximum intensity of 70%. In this example, the amount of State aid granted should not exceed 50% and the total public funding should not exceed an intensity of 70%. Therefore the project could receive 50% State aid and an additional 20% from the EU funding. The amount of EU funding is not taken into account for the calculation of notification thresholds and aid intensities under the State aid rules.

52. Investment aid enabling undertakings to achieve energy efficiency may be supported with 30 % of the eligible costs (Article 38 GBER). Investment aid for the construction or upgrade of research infrastructure may be supported with 50 % of the eligible costs (Article 26 GBER). Would it be in line with Article 26 of the GBER to support the investment cost of energy efficiency measures relating to research infrastructures with 50 % of the eligible costs?

Yes, the cumulation rules laid down in Article 8(3)(b) of the GBER apply to the extent that those investments costs are borne in the context of the construction or upgrade of research infrastructures.

Article 9

53. Article 9(6) of the new GBER provides that Member States have two years within which to comply with the provisions of Article 9. Does the requirement in Article 9(1)(c) - i.e. to publish details on a State Aid website of each individual aid award exceeding EUR 500.000 - apply to all such awards from the 1st July 2014, or only to such awards from the date on which the website is established?

Member States have the obligation to comply with the transparency provisions of Article 9 at the latest within two years after the entry into force of Commission Regulation (EU) No 651/2014. In practical terms this means that Member State have to publish information on their national or regional transparency website on individual aid awards above EUR 500.000 that were awarded after 01.07.2016. On the transparency requirements in general, please refer to the relevant Commission Communication, available here http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1405601594344&uri=CELEX:52014XC0627(02)

54. Is aid information to be published with the date the aid was granted on the central website as soon as possible starting from 1 July 2016. Does the reporting obligation after 1 July 2016 concern only individual aid under schemes notified to the Commission after 1 July 2016 or also to individual aid granted after 1 July 2016 for schemes notified before that date?

Individual aid awards above EUR 500.000 granted after 1st of July 2016 have to be published at the national or regional transparency webpage. This concerns both, schemes that were notified before and after 1st of July 2016. There is no obligation to publish individual awards granted before that date. However, on voluntarily basis, Member States can publish this information earlier.

55. Is the summary information referred to in Article 11 and laid down in Annex II (or a link to that information) or the full text of each aid measure, as referred to Article 11 (or a link to the full text) not to be published on the central website provided that no individual aid award under the scheme exceeds EUR 500.000?

The obligation to publish the summary information sheet referred to in Article 11 and laid down in Annex II (or a link to that information) and the full text of each aid measure, as referred to Article 11 (or a link to the full text) concerns all aid measures that are put in place under the GBER, by each Member State. Such publication obligation deriving from Articles 9(1) (a) and (b) should be fulfilled once the respective schemes are in place, independent of the amount of individual aid awards to be granted. Once an individual aid award above Euro 500 000 is granted under a specific scheme, it shall also be published on the transparency web page, within the deadlines foreseen in Article 9(4).

56. With regard to Article 9(4), what types of aid does the deadline for publication apply to?

The obligation to publish the summary information sheet referred to in Article 11 and laid down in Annex II (or a link to that information) and the full text of each aid measure, as referred to Article 11 (or a link to the full text) concerns all aid measures that are put in place by Member States. Once an individual aid awards above Euro 500 000 is published on the transparency page, it shall be linked to the summary information sheet of the aid measure under which it was granted.

2. Chapter II - MONITORING

Article 10

57. Since the transparency condition is one of the general conditions for the applicability of the GBER, does the failure to comply with this condition render the measure incompatible with the internal market? What other possible sanctions are linked to a failure to publish aid on the central website?

As stated in Article 10, failure to comply with the GBER conditions (including publication and information) might lead to a Commission decision that all or some of the future aid measures adopted by the Member State in question, that otherwise fulfil the GBER requirements, are to be notified to the Commission in accordance with Article 108(3) of the Treaty.

58. Regarding sanctions foreseen in Article 10, will they be automatic?

As provided under Article 10, the application of such sanction can only be done following a Commission decision, to this specific purpose. As stated in Recital (29) the sanction would have to be applied in a proportionate way compared with the number of occurrences and the gravity of the failure to comply with the GBER compatibility criteria by the relevant Member State.

Article 11

59. Article 11 stipulates: "Member States, or in the case of aid granted to European Territorial Cooperation projects, alternatively the Member State in which the Managing Authority, as defined in Article 21 of Regulation (EC) No 1299/2013 of the European Parliament and of the Council, is located, shall transmit to the Commission (…) the summary information in the standardised format laid down in Annex II …". Does it mean that in case of European Territorial Cooperation (ETC) projects Member States can choose whether the Managing Authority or each Member State separately will send the summary information to the Commission?

In order to avoid duplication of efforts, in case of ETC projects summary information can be sent by the Member State in which the Managing Authority is located (not necessarily by the Managing Authority itself) via the usual channels used for State aid notification. The other participating Member States may also place the information on their website (Article 9(1) of the GBER).

3. Chapter III – Specific provisions for different categories of aid

Article 13

60. According to the provisions of Article 13, regional aid shall not apply in the energy generation, distribution and infrastructure sector. What are the NACE code references that this exclusion concerns?

In more precise terms, only NACE division 35 is excluded from the regional aid provisions of GBER. This includes the following economic activities:

35 - Electricity, gas, steam and air conditioning supply

35.1 - Electric power generation, transmission and distribution

35.1.1 - Production of electricity

35.1.2 - Transmission of electricity

35.1.3 - Distribution of electricity

35.1.4 - Trade of electricity

35.2 - Manufacture of gas; distribution of gaseous fuels through mains

35.2.1 - Manufacture of gas

35.2.2 - Distribution of gaseous fuels through mains

35.2.3 - Trade of gas through mains

35.3 - Steam and air conditioning supply

35.3.0 - Steam and air conditioning supply.

When deciding whether the aid favours energy generation, distribution activities or energy infrastructure, the activity that is target of financing/investment will be the main criterion of the assessment.

61. In a situation where relocation was caused by a compelling reason such as a flood protection measure, would the subsequent regional aid measure still fall outside the GBER?

Yes, a notification of such aid measure would be necessary.

62. How is the term "concrete plans" in Article 13(d) to be interpreted and how should be the existence of such concrete plans proven?

The term "concrete plans" should be evaluated on a case-by-case basis. The granting authority could also envisage, for example, a declaration form, where the beneficiary would need to make a declaration that no such plans exist, and a monitoring mechanism that would verify that no relocation took place.

63. Should the word *beneficiary* in Article 13(d) be interpreted as *beneficiary at group level* or only *the beneficiary* as legal entity?

The assessment shall be done at the level of the economic unit (group level) and not only at the level of a subsidiary (given legal entity).

64. Article 13 of the General Block Exemption Regulation (GBER)[5] states that "Regional investment and operating aid "… shall not apply to: … (d) individual regional investment aid to a beneficiary that has closed down the same or a similar activity in the European Economic Area in the two years preceding its application for regional investment aid or which, at the time of the aid application, has concrete plans to close down such an activity within a period of up to two years after the initial investment for which aid is requested is completed in the area concerned."

The implementation of the provision concerning the notification obligation raises the following important interpretation questions: (i) At what level is the beneficiary considered; (ii) What is the area of reference for "closing down the same or similar activity[6]"; (iii) What is the geographical scope of the provision, i.e. what is the relation between the location of the closed activity and the location of the new investment; (iv) What is the concept of "closing down an activity"?; and (v) What period of the closure should be taken into account for the notification obligation?

1. The beneficiary is to be defined at "**group level**", which is considered to be an economic entity with a common source of control rather than just a single subsidiary (a single legal entity).

2. The "**closure of the same or similar activity**" is to be looked at the **level of the given establishment**, rather than at the level of a region or a Member State. In other words, the activity would be considered to be closed down if the beneficiary closes down this activity in a particular establishment (even if he continues the same or similar activity elsewhere in the region or in the MS).

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[5] OJ L 187, 26.06.2014, p. 1.

[6] Article 2(50) of the GBER stipulates that the "same or a similar activity" means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains.

3. The provision applies only if the **closure/relocation involves different EEA countries**, i.e. the closure happens in one EEA country and the aided investment is carried out in another EEA country. Aid given to a beneficiary who has (partially) closed the same or similar activity elsewhere in the same Member State is not excluded from the benefit of the GBER.

4. The concept of closing down means that the activity is fully (100%) closed at the establishment concerned or that the activity is partially closed when this results in substantial job losses. For the purpose of this provision substantial job losses are defined as losses of **at least 100 jobs** or as a job reduction of **at least 50%** of the workforce in the establishment on the date of the application (compared to the average employment in the establishment in any of the two years preceding the date of application). Consequently, notification is necessary in all cases of full closures and if at least one of the two thresholds is exceeded in case of partial closures.

5. The notification of the aid measure is necessary if the beneficiary has closed down the same or similar activity within two years before the date of application or if the beneficiary plans to close such an activity over the entire period from the date of the application and two years after the completion of the initial investment.

65. Article 13 excludes the transport sector from the scope of regional aid. Is this sector also excluded from the regional operating aid schemes in these regions?

Pursuant to Article 13 (a) GBER, the transport sector is excluded from the scope of application of regional aid. The rationale for excluding the transport sector from the regional aid provisions in the GBER is to prevent the application of the regional aid rules instead of the more appropriate sector-specific rules. Both regional investment aid and operating aid are concerned by the exclusion.

66. Can the activities listed in Article 13 (c) benefit of regional operating aid when intended to compensate additional costs, other than transport costs, in the outermost regions?

Article 13(c) lists a number of sectors for which Member States cannot grant regional operating aid compensating for the transport costs in outermost regions. However, Article 1(3)(b) stipulates that the GBER applies to aid granted in in the primary agricultural production sector, intended to compensate for additional costs (other than transport costs) in outermost regions as provided in Article 15(2)(b).

The other sectors mentioned in Article 13 (c) are either excluded from the scope of the GBER altogether (e.g. fisheries as per Article 1(3)(a)), or are subject to sector-specific rules (e.g. electricity, gas).

67. Is it correct that regional investment aid for port infrastructure cannot be granted under the GBER, as the Regulation does not apply to the transport sector as well as the related infrastructure?

Correct.

68. Are yachts considered to be part of shipbuilding in the meaning of the GBER?

As shipbuilding is not defined in the RAG or in the GBER and as RAG makes a reference to the former Framework on State Aid to Shipbuilding, the definitions given in the latter are still considered to be relevant. According to paragraph 12 of Framework on State aid to shipbuilding, 'shipbuilding' means the building, in the Union, of self- propelled commercial vessels. Yachts do not seem to be caught by

the 'Self-propelled commercial vessel' definition, therefore construction of yachts could be considered eligible under the GBER.

Article 14:

69. Is it possible to grant aid under Article 14 of the GBER or under RAG for production of bioenergy or biofuels?

According to Article 13 (1) (a) of the GBER the regional aid section does not apply to aid which favours activities in /…/ energy generation, distribution and infrastructure.

According to recital 33 to the GBER energy generation, distribution and infrastructure are subject to sector-specific internal market legislation, which is reflected in the criteria for ensuring that aid in these areas is compatible with the internal market and consistent with the Union's environmental and energy policies. Regional aid granted under Section 1 of the GBER pursues economic development and cohesion objectives, and is therefore subject to very different compatibility conditions. The provisions of this Regulation on regional aid should therefore not apply to measures concerning energy generation, distribution and infrastructure. Section 7 of the GBER contains specific rules for production of renewable energy, including biofuels. Since the GBER contains specific rules for energy production, including biofuels, investment aid for production of renewable energy and biofuels would not be covered by the regional aid provisions of the GBER.

70. What is meant by "single investment project"?

The rule regarding the single investment project aims to avoid artificial splitting of an aided project into sub-projects in order to escape the notification obligation and/or to escape the capping of the aid amount in accordance with Article 2(20) of the GBER.

As defined by Article 14(13) of the GBER, the date of start of works of two investments concerned is decisive for the qualification of a single investment project. If the date of start of works of the aided projects are started within the period of three years, if the investments are made in the same NUTS 3 region and if the companies making the investments belong to the same group, then the investments concerned form a single investment project. Please note that in order to belong to same group, the companies need to form a collection of parent and subsidiary corporations that function as a single economic entity through a common source of control.

Please note that the ''initial investment'' is defined in Article 2 (49) of the GBER and that the 'start of works'' is defined in Article 2(23) of the GBER.

71. May the same beneficiary (at group level) commence a new initial investment only after three years from the date of start of works on the previous initial investment for which aid was granted in the same NUTS 3 region, in order to avoid the division of projects into sub-projects?

Article 14(13) of the GBER does not restrict commencing a new initial investment project but provides when such projects are considered to be part of a single investment project (SIP) and clarifies the total amount of aid that may be granted if such a SIP amounts to a large investment project.

72. Does the three years rule apply if works on the first aided investment in the same NUTS 3 region started before 1 July 2014 (before the GBER enters into force) and works on another aided investment started after 1 July 2014 (but within a period of three years)?

For measures that fall under GBER 2014, i.e. the aid was granted after 30 June 2014, the rules on the single investment project as defined under Article 14(13) of the GBER 2014 apply. For this purpose the 3 years rule applies from the date of start of works of the aided projects carried out by the same beneficiary (at group level) in the same NUTS 3 region regardless of the fact whether those happened before the entry into force of the GBER, i.e. before 01/07/02014.

For measures that fall under GBER 2008, i.e. the aid was granted before 1 July 2014, the rules on the single investment project as defined under Article 13(10) of the GBER 2008 apply, regardless of the fact whether the works started before or after 1 July 2014.

73. In the GBER there is no longer a reference to Regulation No 139/2004. Why has the reference been removed and does this mean that in the grant implementation process the same conditions as given by the Regulation No 139/2004 can be used?

According to Article 3 (2) of Regulation 139/2004 control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by: - ownership or the right to use all or part of the assets of an undertaking; - rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Article 14 (8) (c) provides as one of the conditions for eligibility of costs of intangible assets that the assets "must be purchased under market conditions from third parties unrelated to the buyer." Unrelated parties are referred to also in other provisions of the GBER in connection with acquisition of assets (e.g. Articles 2 (49) and (51), 14 (4) and 17 (3) (b)).

Since the GBER does not refer to control in terms of Article 3 of Regulation 139/2004, but to "parties unrelated to the buyer ", the fact that the buyer does not control the seller, is not sufficient for fulfilling the criteria of the relevant Articles of the GBER. The parties have to be unrelated. For that, there should be, at the very least, no influence (decisive or not) on the composition, voting or decisions of the organs of an undertaking. That is why even a very small equity participation (e.g., 1%) would mean that the parties are not unrelated.

74. If an individual grant for broadband respects the regional aid map and the aid intensities set forth therein, and there has been a tender open to all types of projects, including broadband projects, could this type of wide tender be accepted as a “competitive selection process” under Article 14(10) of the GBER?

The regional aid section of the GBER has the horizontal objective of promoting regional development rather than focusing on a specific sector. Therefore, public procurement procedures which are open to all sectors and all type of projects that fall under the scope of regional aid could be accepted as long as the "competitive selection process" carried out by the Member State complies with EU Public Procurement Rules.

75. Is the net present value (NPV) of eligible costs of investments subject to the single investment project rule to be calculated as the sum of the three NPVs calculated on the date of starting the

different investments, or the NPVs should be calculated for the same date (first investment or last investment)?

The sub-projects of the investment do not happen at simultaneous times. The values of the eligible costs of and the aid to the sub-projects need to become time-consistent and hence comparable in order to be able to carry out the addition of the eligible costs and of the aid amounts of the sub-projects. Therefore, the NPV should be calculated to the time of one investment sub-project. Based on the case practice, all sub-projects should be discounted to the date of granting the aid for the first sub-project.

76. What is meant by "group"?

In general, a corporate group or group of companies is understood as a collection of parent and subsidiary corporations that function as a single economic entity through a common source of control. The definition of 'single undertaking' included in the Regulation №1407/2013 is only relevant in the context of that Regulation.

77. What are the effects of cumulating the provisions of Article 14 with Article 17?

The cumulation rules of Article 14 apply only for regional investment aid within the borders of the regional aid map and using the regional aid intensities as defined for large enterprises and for SMEs.

Under Article 17, SME investment aid can be granted to SMEs irrespective of their location and for both types of eligible costs at the same moment, but only at the SMEs intensities of 20% for small and 10% for medium sized enterprises.

78. What is meant by "the assets that are reused"?

Article 14 (7) 2nd sentence of the GBER reads as follows: "For aid granted for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works."

This sentence concerns initial investment for diversification of the output of an establishment into products not previously produced in the establishment (see Article 2 (49) (a) GBER), and initial investment in favour of new economic activity for diversification of the activity of an establishment (see Article 2 (51) (a) GBER).The term "assets" includes in the context of initial investments both tangible and intangible assets (see Article 2 (49) (a) and Article 2 (51) (a) GBER). Tangible assets consist of land, buildings and plant, machinery and equipment (see Article 2 (29) GBER).

In a "diversification" project certain assets used for producing a previously produced product would continue to be used for production of a new product. For instance, land and buildings that were used for producing product "A" could completely or partially be used for producing product "B". Such assets are the "reused assets".

The GBER does not require that assets used in an abandoned production are reused. However, pursuant to Article 14 (7) of the GBER, where existing and new assets are combined in a new production activity, the value of the new assets must exceed by at least 200 % the book value of the assets that are reused, as

registered in the fiscal year preceding the start of works . It means that the eligible costs must be at least three times as high as the book value of the "reused assets". The book value is the residual value of these assets as entered to the books of the beneficiary in the end of the fiscal year that precedes the start of works. If an asset (e.g., a building) is only partially reused, the book value of the asset can be taken into account "pro rata". If the condition in Article 14 (7) is not fulfilled, the investment is not considered to constitute an initial investment in the form of diversification of an existing establishment diversification of the output of an establishment into products not previously produced in the establishment (Article 2 (49) of the GBER).

79. What is meant by "the book value of assets"?

The book value of assets refers to the net book value (i.e. the cost of the asset minus the accumulated depreciation).

In case of a ''*fundamental change in the manufacturing process''*, the value of the eligible costs has to exceed the value of the depreciation for the last 3 years prior to the start of works counting from the date of the granting of the aid.

In a *''diversification of an existing establishment*'' scenario, the eligible costs must exceed by at least 200% the book value of the assets that are reused, as registered in the fiscal year preceding the start of works. It means that the eligible costs have to be more than three times higher than the book value of the ''reused assets''. The book value is the residual value of these assets as entered to the books of the beneficiary in the end of the fiscal year that precedes the start of works.

80. Regarding the notion of “fundamental change in the production process”: does it mean that during the modernisation (fundamental change) all the assets (or some of the assets) have to be replaced by the new assets and the costs of the new assets have to be at least the same as the depreciation of the old assets during the preceding 3 years entered in the accounts?

Initial investment in the form of a fundamental change in the overall production process of an existing establishment means the implementation of a fundamental (as opposed to routine) process innovation. The GBER does not define the notion of fundamental change. However, the GBER requires that the eligible expenditure to be incurred for investments in tangible and intangible assets necessary for the implementation of this process innovation exceeds a certain threshold. Under Article 14 (7) of the GBER this threshold is defined as "the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years." The sum of depreciation is calculated over the three fiscal years that preceded the start of works of the project. "Start of works" is defined in Article 2 (23) of the GBER.

The simple replacement of individual assets without fundamentally changing the overall production process constitutes a replacement investment which is not eligible for regional investment aid as it does not qualify as a fundamental change of an overall production process, and thus is not considered to constitute an initial investment. This holds also if individual items of equipment are replaced by others that are more performing unless this leads to a fundamental change on the overall production process. Under Article 14 (4) eligible costs are investment costs in tangible and intangible assets. Under Article 14 (8) for large undertakings the costs of intangible assets are eligible only up to a limit of 50 % of the total eligible investment costs for the initial investment. Under Article 14 (6) the assets acquired have to be new, except for SMEs.

81. Do the assets that are re-used in the case of State aid to a diversification of an existing establishment qualify as eligible costs?

In principle, only new assets can qualify as eligible costs for all types of initial investments foreseen by regional aid provisions of the new GBER (except for SMEs and for the acquisition of an establishment, as specified in Article 14(6) of the GBER, where used assets purchased from a third party can be eligible as well). In the diversification of an existing establishment (being a particular type of initial investment) there is one additional requirement. This investment project as such can be composed of two types of assets: 1) already belonging to the company and re-used for the project (and not being eligible for aid) and 2) new or- in special circumstances mentioned above- purchased from a third party used assets (eligible for aid). However, for the project to be considered eligible for aid, the value of its new assets (or purchased from a third party used assets) must exceed by at least 200% the book value of re-used assets as registered in the fiscal year preceding the start of works. As only the new assets (or- in special circumstances mentioned above- purchased from a third party used assets) are eligible for aid, the total aid will be calculated with reference to the amount of these assets.

82. If depreciation of "assets linked to the activity to be modernised" is to include all assets, however peripherally linked they are to production (such as the assembly hall premises, shared lighting etc.), how is the percentage share of these depreciations to be determined in order to be compared against the eligible expenditure? On the basis of the floor surface area of the assembly hall, the percentage use of the machines, the share of sales?

The term assets in the context of initial investments refers both to tangible and intangible assets (see Article 2 (49) (a) and Article 2 (51) (a) GBER). Tangible assets consist of land, buildings and plant, machinery and equipment (see Article 2 (28) GBER). Therefore, the buildings for manufacturing or storing manufactured products are covered by Article 14 (7) 2nd sentence of the GBER if these assets are linked to the activity to be modernised. Member State can carry out a pro rata calculation. The GBER does not prescribe the method to be applied by the Member State for that purpose, i.e. the Member State can rely on a bona fide approach that takes into account the specific situation and characteristics of the establishment and activity concerned.

83. How is asset depreciation to be calculated for companies that have existed for less than three years?

The Member State can apply a bona fide estimate, taking into account standard depreciation rules under its fiscal law.

84. What can be the financial contribution "in the form free of any public support"?

The financial contribution free of any public support means funding derived from the own resources of the company or loans obtained in the market on commercial terms, and not covered by State guarantees. The shareholder structure of the company is not relevant in this case.

The centrally managed Union funding is considered public support, even if it is not State aid.

85. Is there any best practice on how to demonstrate that the assets of an establishment were acquired on market conditions, especially in the case of acquisitions of entire establishments (undertakings) and intangible assets?

We would consider as best practice the expertise conducted by an independent company, or proving that the acquisition of an establishment takes place between independent companies or in full respect of the "arm's length" principle.

86. In the case of regional aid, does the condition regarding the provision of wholesale access to build broadband infrastructure only apply to NGA networks, or also to basic broadband networks?

The subsidized network operator must offer active and passive wholesale access under fair and non-discriminatory conditions both in cases of basic broadband and NGA.

87. How is Article 14 to be applied in relation to undertakings' investments consisting in the construction and equipping of research laboratories?

Article 14(11) GBER specifies that if the aid is granted for research infrastructure, the access to the latter needs to be transparent and non-discriminatory. This provision would therefore not be applicable in case of a laboratory infrastructure of undertakings which use this infrastructure for solely for their own purposes.

88. What should be the adopted maximum limits of regional investment aid for a single investment project implemented in stages?

According to Article 14 (13) of the GBER, any initial investment started by the same beneficiary at group level within a period of three years from the date of start of works on another aided investment in the same NUTS 3 region shall be considered to be part of a single investment project. The applicable aid intensity for each partial project is the aid intensity applicable under the regional aid map in force at the time of awarding the aid (adjusted by scaling down, where applicable).

Article 15:

89. How are the thresholds in Article 15 to be applied?

When the aid per beneficiary under all operating aid schemes does not exceed the amount resulting from one of the alternative methods to determine the additional operational costs (other than transports costs) referred to in Article 15(2)(b)ii of the GBER, the aid can be considered justified in terms of contributing to regional development and proportionate to the handicaps that undertakings face in the outermost regions.

90. Can the regions covered by the measure choose to apply only one of the criteria or any criterion of Article 15(2)(b)ii, which ever would be the most favourable to the beneficiary?

The regions covered by the measure may apply only one of these criteria. They may apply any criterion of Article 15(2)(b)ii, which is most favourable to the beneficiary. In any case, Member States shall ensure that the applicable threshold is respected.

91. If the level of aid to be granted under a scheme does not exceed the limits provided in Article 15, can the aid be considered compatible with the internal market and exempt from notification?

In order for operating aid to be considered compatible with the internal market and exempt from notification, it has to be ensured that aid from all operating aid schemes granted to the same beneficiary does not exceed the limits provided in Article 15 of the GBER and that other, specific and general conditions laid down in the GBER are respected.

Member States need to introduce in the national legislation specific provisions and effective mechanisms for control in order to ensure that the aid granted under all operating aid schemes per beneficiary does not exceed the limits laid down in the GBER and the respect of the other GBER conditions. Thus Member States shall also monitor cumulation with other operating aid schemes under which the beneficiaries can receive aid.

92. To calculate the requirement laid down in point ii) of paragraph a), of number 2, of Article 15 of GBER, will it be acceptable to consider an average value calculated on the basis of a consultation to several freight forwarders operating in an outermost region?

Article 15(2)(a)(ii) allows for the granting of operating aid aimed to compensate for aid which is *objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit*. In this respect, the Commission services consider that an average value calculated on the basis of a consultation to several freight forwarders would enable the beneficiaries to later choose for the lowest possible offer from freight forwarders. Therefore, we consider that for the purpose of calculating these costs, the Member State should take into account the lowest possible offer.

Ideally, those additional transport costs should be compensated on the basis of the actual costs incurred by the beneficiaries as demonstrated by an invoice.

93. What is meant by “journey”?

The definition of a "journey" as referred to in Article 15(2)(a) of the GBER should be understood to mean *"the movement of goods from the point of origin to the point of destination, including intermediary sections or stages within or outside the Member State concerned, made using one or more means of transport"*. The 'point of destination' is defined as *"the place where the goods are unloaded"* (Article 2(53) of the GBER), whereas the 'point of origin' is defined as *"the place where the goods are loaded for transport"* (Article 2(54) GBER). Therefore, the additional transport costs should be calculated on the basis of the journey from the place of production (factory) to the place of delivery to the distributor/customer.

Article 16:

94. Urban development projects must be implemented via urban development funds in assisted areas. What is the connection between point 8 and 11 of Article 16?

The possibility to "assign the implementation of the urban development aid measure to an entrusted entity" laid down in Article 16(11) of the GBER means that a Member State may entrust the implementation of a public financial instrument (i.e. the provision of equity, quasi-equity, loans or guarantees on behalf of the State) to a financial institution. To the extent that analogous provisions are laid

down in Article 21 for risk finance aid, it can in this context be considered that qualifying financial institutions are those which are referred to in Article 2(79) of the GBER. In any case, urban development fund managers must be selected through an open, transparent and non-discriminatory call.

Article 17:

95. Does the term "third parties which are unrelated to the buyer" only relates to structural relationships or to contractual relationships such as supplier contracts between the buyer and the seller?

For the parties to be unrelated, there should be, at the very least, no influence (decisive or not) on the composition, voting or decisions of the organs of an undertaking. That is why even a very small equity participation (e.g., 1%) would mean that the parties are not unrelated. A typical contractual relationship without such a participation would not be considered to be within the scope of this provision.

Article 18:

96. Can internal services be financed in the context of preparatory works?

Article 18(3) of the new GBER specifically states that: "*The eligible costs shall be the costs of consultancy services provided by external consultants*". Consequently, it is not possible to grant aid for internal consultancy services.

97. Can the costs of preparatory studies and consultancy related to the investment project be included in the eligible costs of the investment even if they were encountered before the application for aid?

As such treatment of consultancy costs is not specifically foreseen in the provisions of the new GBER, this is not allowed. Any aid for consultancy (for SMEs) should be granted under Article 18 of the new GBER.

Article 19:

98. How is the incentive effect to be applied in relation to participation in fairs?

In order to comply with the provisions of Article 19 GBER regarding maximum aid intensity and the requirements regarding incentive effect, beneficiaries under the call will have to submit (maybe after an initial pre-selection phase) a request detailing the relevant eligible costs of fairs in which they intend to participate. It should be possible in the same request to identify the location. The incentive effect condition in this case must be met before any binding commitment to participate in the fair(s) is made.

Article 20:

99. What is meant by "investment expenditure directly related to the project"?

Based on the comments received in the public consultation on the GBER, an effort was made to harmonise the wording of Article 20(2) with European Territorial Cooperation rules and extra-territorial cooperation cost categories as mentioned in the European Territorial Cooperation Regulation (Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal). The investment expenditure directly related

to the project should be interpreted as meaning investment costs in tangible and intangible assets that are undertaken by the project-partners and are directly related to the European Territorial Cooperation project.

100. Does aid intensity refer to the entire eligible costs of the project budget or the budgets of individual beneficiaries?

The aid intensities are established at the level of individual beneficiaries. Please note that in case of participants of the project which are not engaged in economic activity, their funding is not considered State aid and therefore the maximum aid intensity requirement does not apply to them.

Article 21:

101. Is it correct that in the context of a follow-on investment under Art. 21 para 6 GBER it is not required that an independent investor makes the investment?

Correct, the private investor making the follow-on investment should be the same as the investor who made the initial investment. The requirement of "independent private investor" as defined in GBER Article 2 (72) relates to the time of the initial investment.

102. Can the requirement in Article 21 (7) that generation of new capital should reach "at least 50 % of each investment round" be clarified?

This provision addresses a situation where the aided investment involves the replacement of existing shareholders. In this case, out of the entire amount of each investment round involving such capital replacement operations, at least 50% must be invested in newly issued shares. One should not take into account previous investment rounds. E.g. where 1m EUR is invested under a risk finance measure (private and public funds combined), 500.000 EUR of that can be used as replacement capital but the other 500.000 EUR must serve as new capital for the undertaking.

103. What does it mean that private investors should be chosen in the framework of an open, transparent, non-discriminatory call?

Art. 21 para 13 (b) GBER makes reference to a genuine call to select private investors. The documents published for such a call should not define in detail the financial conditions under which the risk finance investment will be made, but should rather leave them open for independent private investors to make proposals. The outcome of the call should be specific on the conditions under which independent private investors are willing to invest alongside the public investor (cf. Art. 21 para 13 (b): "*a call, which is [..] aimed at establishing appropriate risk-reward sharing arrangements*").

The call is aimed at finding independent private investors that will invest with fresh funds as part of the risk finance provided together with the public investor. The purpose of risk finance measures is for the public investment to constitute a proportionate incentive for independent private investors.

104. Does the GBER allow Member States to design risk finance measures with a downside protection mechanism other than by way of guarantees?

Article 21.13 (b) GBER requires that, for instruments other than guarantees, the open call aimed at establishing the risk-reward sharing arrangements favours selection criteria based on asymmetric profit sharing over downside protection. However, if the result of the call is that asymmetric profit sharing is not possible, Article 13 (b) does not prohibit downside protection.

Article 21.13 (c) GBER does not apply to guarantees, but to all other financial instruments, such as loans and equity. It can for instance be agreed that the public investor will cover the first loss piece, but in that case this first loss piece must be limited to 25% of the total investment. Please note that the 25% cap does not limit the public investment to 25% of the total investment, but only limits the first loss taken by the public investor.

In this context, please note that paragraph 48 of the Risk Finance guidelines requires, amongst other, that, for instruments other than guarantees, where the public investor would cover a first loss higher than 25% or where the open call favours selection criteria based on downside protection over upside incentives, the risk finance measure needs to be notified and will be assessed under the Risk Finance Guidelines.

105. What are consequences of the situation in which the task to implement a risk finance measure is assigned to the entity entrusted with the task?

The Member State may entrust the implementation of a risk finance measure (e. g. providing the State financing or the State guarantees on behalf of the State) to an entrusted entity, which acts as the State.

In some cases it occurs that the entrusted entity shares risk with the State under the measure by co-investing own financial resources. Where it co-invests, the entrusted entity acts in its own capacity as a financial institution by taking risk on its own balance sheet, and is no longer subject to the risk finance rules on entrusted entities, but must respect the risk finance rules on financial intermediaries.

What is important to note is that the notion of an "entrusted entity" refers to its role (acting on behalf of the State), but not to the process of selecting such institution, i. e. entrustment does not necessarily imply an appointment. In other words, the State may select or appoint a financial institution to act as its entrusted entity.

106. How shall the remuneration of the financial intermediaries be calculated?

A market conform remuneration should be established on the basis of a competitive procedure for the selection of the financial intermediary. Any other additional advantage granted to the financial intermediary through the measure would have to be passed on to the investee undertakings or capped at the de-minimis level.

107. Can the Commission clarify whether the levels of required investment of GBER Article 21 (10) a-c also apply to follow-on investments in so far as the target undertaking meets the relevant criteria in GBER Article 21 (6)] a-c?

Follow-on investments under the risk finance rules are only allowed for eligible undertakings that have received an initial risk finance investment in the period prior to their first commercial sale up to 7 years thereafter. If a follow-on investment is made in the period prior to first commercial sale, the aggregate private

participation rate of Article 21, paragraph 10 (a) applies. If a follow-on investment is made in the period up to 7 years after first commercial sale, the aggregate private participation rate of Article 21, paragraph 10 (b) applies. A follow-on investment may be made even after the initial 7-year period, but in this case, pursuant to Article 21, paragraph 10 (c), the risk finance measure must leverage additional independent private finance representing at least 60% of the follow-on risk finance investment.

108. Does the GBER cover the situation where the entrusted entity co-finances and manages the fund?

According to Article 21(17), "*a Member State may assign the implementation of a risk finance measure to an entrusted entity*". This means the Member State may entrust the implementation of a public financial instrument (i. e. the provision of a loan or equity financing or guarantees on behalf of the State) to a financial institution, in which case the financial institution acts as an entrusted entity of the State. GBER Article 2 (79) specifies the types of qualifying financial institutions that may be entrusted by the State.

According to point 20 of the Risk Finance guidelines, the State and the entity acting on its behalf may not finance the SMEs directly. This means that financing to SMEs must be provided by financial intermediaries (they carry out credit risk assessment or investment due diligence), as per Article 17(13)a. The financial intermediaries must be selected through an open, transparent and non-discriminatory call as per Article 17(13)b.

109. Should Article 21 (18) (a) be interpreted as meaning that also the de minimis threshold has to be respected by the SMEs covered by this provision?

According to recital (19) of the de minimis Regulation, where a de minimis aid scheme is implemented through financial intermediaries, it should be ensured that the latter do not receive any State aid. This can be achieved, for example, by requiring financial intermediaries that benefit from a State guarantee to pay a market- conform premium or to fully pass on any advantage to the final beneficiaries, or by respecting the *de minimis* ceiling and other conditions of this Regulation also at the level of the intermediaries.

In the light of the above, Article 21 (18) (a) GBER is meant to address situations where aid is present at several levels, not only at the level of the final beneficiary (SME-level in this case). As regards the SME level, all the conditions under the de minimis Regulation (including the aid ceiling) should be applied. However, the risk scheme as such (including aid at the level of the financial intermediary and at the level of the SME) would still have to be designed in accordance with the GBER provisions or in accordance with the prescriptions of recital (19) in order to be exempted from notification.

Article 22:

110. Can start-up aid be made available through initial investments and follow on investments, provided that the total of the start-up aid to any one eligible undertaking respects the overall limits?

Yes, start-up aid can be given for a total up to the maximum amounts mentioned in paragraphs 3(c) and 5, as long as the eligible undertaking remains at the moment of granting within the definition in paragraph 2 (i.e. within the 5 year period).

111. For the awarding of aid for start-ups, the GBER does not require a call for tender. Is this the same in case the aid for start-ups is given by a fund, or must the fund management in this case be selected in accordance with Article 21 GBER in an open, transparent call?

Article 22 GBER requires neither that the aid is awarded via a financial intermediary, nor that, if a financial intermediary is used, it must be selected in an open, transparent call.

However, if start-up aid is granted via a financial intermediary, it needs to be ensured that no aid remains at the level of the financial intermediary. If the financial intermediary is selected through an open, transparent, non-discriminatory call, then the presence of aid at the level of the financial intermediary can be excluded, provided that, in case of debt instruments, the financial intermediary is subject to the obligation to pass on in full to the final beneficiary any advantage stemming from the instrument; if not, the Member State needs ensure in another way that there is no aid at that level.

112. Does the concept of "entrusted entity" also apply in the case of aid for start-ups?

The rules on entrusted entities only apply within the scope of Article 21, which encompasses underlying basic principles that apply to aid for risk finance aid. It should be noted in this connection that the status of "entrusted entity" as defined in Article 2(79) of the GBER excludes that such entity intervenes or co-invests in a risk finance aid measure, as in such a case the entity concerned would rather have the status of a "financial intermediary". As regards start-up aid granted pursuant to Article 22 of the GBER, the concept of "entrusted entity" is not relevant as this provision does not require aid to be deployed via intermediated financial products.

113. Can start-up aid be provided at different times and through a mix of aid instruments?

Yes, start-up aid can be provided at different times, as long as at the time of granting the beneficiary complies with the eligibility conditions.

The maximum amount of start-up aid that can be given is not equal to the maximum nominal amount allowed for loans (e.g. 1 million EUR), plus the maximum guaranteed amount for guarantees (e.g. 1.5 million EUR), plus the maximum gross grant equivalent amount (e.g. 0.4 million EUR).

The calculation of the amounts that can be granted in case of a mix of aid instruments is on a proportional basis as described in paragraph 4 ("[..] *the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account in order to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument*").

If we take as an example a company in a non-assisted area that does not qualify as an 'innovative enterprise', to which the authorities wish to give a mix of start-up support in the form of a loan with duration of 10 years, in the form of a guarantee with duration of 10 years and in the form of a grant:

For the part in form of loan, the maximum nominal amount is 1 million EUR, so if 200 000 EUR is given as nominal loan amount, this represents 20% of the maximum nominal amount for loans.

For the part in form of guarantee, the maximum guaranteed amount is 1.5m EUR, so if 600 000 EUR is guaranteed, this represents 40% of the maximum guaranteed amount.

Therefore the support in form of grant is allowed up to 40% of the gross grant equivalent amount of 0.4 million EUR, which means that 160 000 EUR of gross grant equivalent is allowed.

114. Article 5.4 of the old Research and Development and Innovation guidelines (2007- June 2014) restricted a beneficiary of young innovative enterprise aid to Research and Development aid and risk capital aid for a period of 3 years after receipt of the aid. There does not appear to be any similar restriction on a beneficiary under Article 22 of the GBER.

The restriction was discontinued. The cumulation rules laid down in Article 8(4) GBER however apply.

Article 25:

115. Can the Commission confirm that when the beneficiary has obligation of maintenance under national legal basis or the provisions of Structural Funds, this maintenance period can be taken into consideration as part of the project, therefore depreciation costs occurred during this period are also eligible?

No, regardless of any specific obligation laid down in the national legal basis or the provisions of Structural Funds, costs of buildings and land are only eligible to the extent and for the duration period used for the aided Research and Development project.

116. Can the Commission confirm that the following costs are eligible, if they are directly linked to the research and development project: costs of participation of conferences related to the project such as travelling costs, accommodation costs, participation fees?

Yes, such costs can be eligible as additional overheads and other operating expenses if they are incurred directly as a result of the project.

117. How should Article 25.6(b)(i), second indent, be interpreted? What contribution should provide the research and knowledge-dissemination organisation, and what is the maximum funding rate for the entire project in case of collaboration?

Article 25.6(b)(i), second indent, of the GBER provides for a possible increase in aid intensities for Research and Development projects which are carried out through effective collaboration (in the meaning of Article 2(90) of the GBER) between undertakings and research and knowledge-dissemination organisations. In particular, aid intensities may thus be increased by up to 15 percentage points, under the condition that the collaborating research and knowledge-dissemination organisations bear at least 10% of the eligible costs and have the right to publish their own research results. Since aid intensities must be established for each

beneficiary of aid, including in the case of collaborative projects, the maximum funding rate for a specific project will however depend on the number and type of collaborating parties, as well as on the categories of research activities carried out and share of eligible costs borne by each one of them.

118. Can you confirm that the aid for process and organisational innovation concern both products and services?

Yes.

119. Under which applicable rules can large undertakings receive aid for industrial property rights?

Aid for obtaining, validating and defending patents and other intangible assets can only be granted to SMEs. However, large undertakings could for instance receive aid for the "costs of knowledge and patents bought or licensed from outside sources at arm´s length conditions" in the context of aid for Research and Development projects (Article 25 GBER).

120. Can investment aid be granted for Research and Development projects aiming at improving technical and utility value of products, technologies and services?

All R&D&I aid should in principle lead to increased technical and practical value of products, technologies or services. Please note that routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements, are not eligible for funding.

Article 26:

121. What is meant by research infrastructure?

Research infrastructures are defined by their content on the basis of Regulation No. 723/2009[7].

122. Is it possible to grant State aid to research organisations for construction or upgrade of research infrastructure if the use of the infrastructure is not linked to any concrete Research and Development and Innovation project?

Yes.

123. Can research organisations be aid beneficiaries of the investment aid for construction and upgrade of research infrastructure?

Yes.

124. Can investment aid be granted for research infrastructure covered under Art 26 GBER to undertakings, which will have exclusive right to use it?

No. State aid for construction and upgrade of research infrastructure is in accordance with Art.26 of GBER compatible with the internal market, only if the access to such infrastructure is granted to several users on a transparent and non-discriminatory basis. Preferential access under more favourable conditions to the

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[7] Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009, p. 1.

publicly co-financed infrastructure could only be granted to undertakings which have financed at least 10 % of the investment costs. The access must be in proportion with their contribution to the investment costs and the conditions of access must be made public. Therefore, an exclusive use of publicly funded infrastructure by an undertaking or a group of undertakings (dedicated infrastructure) is not in line with Article 26 of GBER.

125. Would it be in line with GBER to support the investment cost of energy efficiency measures relating to research infrastructures with 50 % of the eligible costs?

Yes, to the extent that those investments costs are borne in the context of the construction or upgrade of research infrastructures the cumulation rules laid down in Article 8.3(b) of the GBER apply.

126. Can the users of publicly supported infrastructure receive *de minimis aid*?

Yes, users of publicly supported infrastructure may receive *de minimis* aid, provided that all the applicable conditions are respected.

127. How are the eligible investment cost calculated? What about cases that may require the re-assignment of existing assets?

Article 26 of the GBER lays down the rules applying to investment aid for research infrastructures, that is to say aid for the construction or upgrade of research infrastructures that perform economic activities. In this context, the eligible costs referred to in Article 26(5) are the investment costs in tangible and intangible assets, as defined in Articles 2(29) and (30) of the GBER.

As a rule, and insofar as the aid relates to the construction and upgrade of research infrastructures, it is therefore expected that the eligible investment costs relate to the acquisition of new assets that will be used for performing economic activities, of which at least 50% have indeed to be borne by the aid beneficiary.

In those cases that may exceptionally require the re-assignment of existing assets (such as land and buildings) from non-economic to economic activities, and to the extent that such assets would qualify as eligible costs, this has to be done on the basis of a proper separation of the financing, costs and revenues of each type of activity. Under these circumstances, existing assets that have been provided or financed by the State for non-economic activities before the *Aéroports de Paris* judgment of 12 December 2000 (Case T-128/98 *Aéroports de Paris v Commission* ECLI:EU:T:2000:290) may generally be considered as not including State aid. Otherwise, such assets may be considered for the purpose of determining the "own contribution" from the aid beneficiary only if they have been fully depreciated by the date of their re-assignment or a compensation for their use equivalent to the market price is due by the economic "division" of the aid beneficiary to its non-economic "division".

128. What conditions should be met to consider the bonus for the dissemination of the results reasonable?

Taking account of the national specificity and the individual character of each R&D project, the Member State should define the optimal process for the research

results (and not merely the overall deliveries of the project) to be disseminated to the widest extent possible, at national as well as EU level.

129. May this provision provide the basis for the financing of R&D infrastructure in undertakings and in the case of projects implemented by the scientific and industrial consortia in which an undertaking will be the leader/applicant?

Subject to compliance with the definition of "research infrastructure" laid down in Article 2(91) of the GBER, the R&D&I State aid rules do not contain any limitations relating to ownership (public or private) or nature of activities (economic or non-economic) of the relevant infrastructure.

However, in line with the said definition, the research infrastructure eligible for support under Article 26 of the GBER needs to be used by the scientific community, where the expression "scientific community" is used in the same sense as in Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC)[8] and relates to any structured or unstructured group or network of persons engaging in a systematic activity to acquire knowledge. Furthermore, in line with Article 26 of the GBER, it is essential that access to the infrastructure is granted to several users on a transparent and non-discriminatory basis.

In light of the above, support for a research infrastructure used by one undertaking for its own purpose (therefore excluding its use by the "scientific community" on a non-discriminatory basis) falls outside the scope of Article 26.

130. In what period should the monitoring be carried out?

The monitoring mechanism applies where a research infrastructures receives public funding for both economic and non-economic activities and should be carried out for the economic life of the infrastructure, i.e. for the depreciation period of the relevant assets.

Article 27:

131. Are the costs referred to in Article 2(42), (personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc.) also applicable to Article 27?

The cost categories mentioned in Article 2(42) of the GBER are directly relevant for regional operating aid only. Insofar as operating aid for innovation clusters is concerned, eligible costs are limited to the personnel and administrative costs related to the eligible activities listed in Article 27. Therefore, any costs that do not fall under the relevant categories (personnel and administrative costs) cannot be considered as eligible for this purpose.

132. Since which moment is the 10 years period computed?

The period during which operating aid may be granted for innovation clusters starts at the moment when such operating aid is granted for the first time.

133. Besides costs of salaries, holiday pay, health checks and taxes, may personnel costs include costs of staff training and travelling to market the cluster?

Yes, to the extent that such costs are clearly and strictly linked to the marketing of the cluster.

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[8] OJ L 206, 8.8.2009, p. 1.

134. When organising training programmes, workshops and conferences, are costs of buying materials and services also eligible (catering, renting a room, etc.)? Or travel costs for bringing over a speaker?

Yes, to the extent that such costs are clearly and strictly linked to the organisation of a specific training/workshop/conference.

135. What is considered eligible for marketing purposes? Does marketing of the cluster include travelling abroad (for personnel) and organising an event there (e.g. to meet other clusters, to market what the cluster has to offer) or participating in a fair?

Eligible costs for marketing purposes are those personnel and administrative costs (including overheads) which are incurred with a view to increase participation of new undertakings or organisations, as well as visibility of the relevant cluster. To the extent this is the case, eligible costs can thus refer to travelling abroad, organising an event or participating in a fair.

136. May operating aid be provided both to existing clusters and to new ones?

Yes. Since operating aid is limited to a maximum of 10 years, for existing clusters this however means that any past aid needs to be taken into account, i.e. the starting date for the calculation is the date of the first aid granted.

137. May the operating costs listed in Article 27(8), points a), b) and c) be implemented by companies outside the cluster, as eligible costs?

As follows from Article 27(2) of the GBER, operating aid for innovation clusters shall be granted exclusively to the legal entity operating the cluster. The eligible costs are limited to the personnel and administrative costs incurred by the cluster operator and relating to the eligible activities listed in Article 27(8). Therefore, any costs that do not fall under the relevant categories (personnel and administrative costs) cannot be considered as eligible for this purpose.

138. How is Article 27(4) of the GBER to be interpreted? May there be an "exemption from the payment obligation" for cluster members or users?

As follows from Article 27(1) of the GBER, aid for innovation clusters is reserved to the legal entity operating the innovation cluster (and not e.g. its members or users) and can only be block exempted if all the necessary conditions are fulfilled. One of these conditions is that fees charged for using the clusters' facilities and for participating in their activities correspond to the market price or reflect costs.

However, although there may not be an "exemption from the payment obligation", cluster members or users can benefit from aid granted in compliance with other GBER provisions (typically, aid for start-ups under Article 22 and aid for innovation advisory and support services under Article 28) or the *de minimis regulation* to purchase the clusters' services.

Article 28:

139. May aid associated with obtaining and defending intellectual property rights cover only the costs associated with obtaining such rights to research results and processes carried out by the undertaking/beneficiary on his own, or also the acquisition of rights of a third party who carried out the research and patented its outcome?

The eligible costs listed in Article 28(2)(a) of the GBER are costs for obtaining, validating and defending patents and other intangible assets and have to be incurred by the beneficiary directly. Costs linked to acquisition of rights from a third party can only be eligible under Articles 25 ("aid for research and development projects") or 29 ("aid for process and organisational innovation") of the GBER, provided they are incurred in the framework of an eligible R&D&I project or activity.

Article 30:

140. Can the Commission confirm which Articles within *Section 4 – Aid for research and development and innovation* can be used to support relevant activities in (a) the fishery and aquaculture sector and (b) the primary agricultural production sector?

As long as there is no distinction within Article 1(3) (a) and (b) as to the type of aid or instrument, all Articles within the Section 4 are applicable to aid in the fishery and aquaculture sector. Except for Article 30 that deals with a particular type of aid to research organisations for undertaking studies in the fisheries and aquaculture sector, all other Articles of Section 4 apply to the primary agricultural production sector as well.

Article 31:

141. How is Article 31(2) to be interpreted?

Aid for training which is mandatory under national law lacks incentive effect as it would be pursued even in the absence of public funding, and, therefore, cannot be block exempted. In this regard, it is irrelevant whether the training is carried out to comply with national standards which are mandatory for the undertaking in question or for its employees and also whether the training is carried out by the undertaking itself or an external trainer. As long as the State is paying for this training, which is mandatory under national law, and the training benefits the undertaking directly or indirectly (in case the employees are trained outside the undertaking), the aid is covered by Article 31(2) and cannot be granted.

142. Can accommodation costs of seafarers be exceptionally covered regarding training aid in maritime transport?

Article 31(3)(b) explicitly excludes accommodation from eligible costs (in contrast with the previous GBER). Article 31(5) (applicable only to maritime transport) requires that training is conducted on board of ships and trainees are supernumerary (i.e. not active crew members). In order to comply with those two conditions trainees have to stay on board of a ship during training. Thus, in the case of training on board of ships accommodation costs are operating costs directly relating to the training project. Accommodation cost may be found compatible should a training aid be notified and assessed under the Maritime Guidelines.

143. Which is the maximum aid intensity for mid-sized businesses and small enterprise, for the training to workers with disabilities or disadvantaged workers?

As stated in point 4 of Article 31, the aid intensity shall not exceed 50% of the eligible costs. It may be increased, up to a maximum aid intensity of 70% of the eligible costs, as follows:

(a) by 10% if the training is given to workers with disabilities or disadvantaged workers;

(b) by 10% if the aid is granted to medium-sized enterprises and by 20% if the aid is granted to small enterprises;

The maximum aid intensity for training to workers with disabilities or disadvantaged workers is thus 50%+10% = 60%;

The maximum aid intensity for training to workers with disabilities or disadvantaged workers in mediums sized enterprises is thus 50%+10%+10% = 70%;

The maximum aid intensity for training to workers with disabilities or disadvantaged workers in small enterprises is thus 50%+10%+20% = 80% but limited to the maximum aid intensity of 70%.

144. Which types of training would be covered by Article 31 and what does the Commission mean by 'national mandatory standards on training'?

The purpose of Article 31(2) is to allow for the support of training measures undertaken by enterprises with the purpose of developing and updating the knowledge of their workforce (e.g. management trainings, language trainings). However, trainings that are mandatory under the national system for example health and safety training would have to be pursued anyway, even in the absence of the aid. Aid for such trainings, thus, lacks incentive effect and can, therefore and in accordance with Article 31(2), not be block exempted

145. What is meant under “trainers’ personnel costs” and “wage costs” – only salaries or all related non-wage costs (social insurance contributions, additional remuneration, allowances, etc.)? How should eligible personnel costs be calculated – gross (before social security contributions and other non-wage costs that shall be paid by the employer) or net?

"Trainers' personnel costs" are identified in Article 31 point 3 (a) of GBER as "the hours during which the trainers participate in the training". This can be either the fees paid to the trainers or, if they are in-house trainers, an allocation pro-rata of their salaries to the hours spent on training. According to the recital (23) of the GBER: "(…) *The identification of eligible costs should be supported by clear, specific and up-to date documentary evidence. All figures used should be taken before any deduction of tax or other charges.* (…)" Therefore all sums should be calculated on the basis of gross amounts.

The notion of "wage costs" is not defined in the GBER in relation to training aid but is applicable to regional aid measures or aid measures for certain categories of employees. The notion of "wage costs" may however be relevant for training aid under "trainees' personnel costs for the hours during which the trainees participate in the training" (see above). Article 2 point 31 of GBER defines ‘wage cost’ as "the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising over a defined period of time the gross wage before tax and compulsory contributions such as social security, child care and parent care costs".

As regards "allowances" or "additional remuneration", pursuant to Article 31(3)(b) of the GBER additional costs not related to the trainers' or trainees' personnel costs

may only be covered, if they qualify as "*operating costs directly relating to the training project*". Therefore, if "allowances" or "additional remuneration" are considered for example as necessary travel expenses, then they can be covered by this category.

146. Do the costs of advisory services linked to the training project include consultancy fees for the preparation of the project proposal?

Consultancy fees for the preparation of the project proposal can be considered as "*costs of advisory services linked to the training project*" and therefore falling within the list of eligible costs as defined in Article 31 point 3 (c) if this project proposal has been eventually chosen.

Article 32:

147. How should Articles 32(3) and 33(3) be interpreted?

These paragraphs intend to clarify in what circumstances the recruitment or wage costs of newly employed personnel shall be eligible for support, even in case of no net increase in the number of total employees of the undertaking (and without prejudice to the net increase in another establishment of that undertaking). Therefore, as the beneficiary of the aid will be the undertaking, the conditions concerning the net increase should apply at the level of the undertaking.

148. May firms acquire grants for the recruitment of disadvantaged workers in less than 12 months, if there is a net increase in the number of employees?

The condition in paragraph (3) of Article 32 is meant to ensure that no employees are made redundant with the objective of re-hire of disadvantaged workers in order to benefit from the State aid. If the company is in existence for less than 12 months, the average number of workers shall be calculated over the period for which the company was in existence. The firm may thus acquire grants for the recruitment of disadvantaged workers if there is a net increase in the number of employees.

149. What is the meaning of "regular employment"? Is State subsidised employment considered to be regular employment?

State subsidised employment may also be considered as regular employment. The reason for requiring the worker not to be in regular employment is linked to the definition of 'disadvantaged worker'. In this context, the type of work or financing shall not change the nature of 'regular employment', meaning lasting a certain minimum duration. The other conditions in Article 32 regarding the net increase in the number of workers shall also be complied with.

Articles 33-34:

150. For what duration may State aid for the employment of workers with disabilities be granted?

Article 33 and 34 may be used to compensate the additional costs of employing workers with disabilities and the scope of the scheme may limit the benefit to one or more undertakings based on objective criteria. The duration however will have to be limited to the GBER duration and the aid will have to be capped ex ante (to the notification threshold) to ensure that the aid amount remains transparent.

151. If the beneficiary provides sheltered employment, eligible costs may be, among others, the costs of constructing, installing or modernising the production units of the undertaking concerned. Does this investment mean the rooms in which the employer

offering sheltered employment carries out production, or should it be understood broadly - as all units that the employer uses to conduct economic activity, e.g. to provide services, as well as other rooms, e.g. rest and social base as required under national law?

This eligible cost shall be understood broadly as covering all units that the employer uses to conduct economic activity.

152. Could it be considered aid to keep disabled workers in their posts when the recruitment has taken place one or two years before the date of granting the aid?

If at the time of employment the workers was not disabled but becomes disabled during the validity of the contract, the company employing him may receive support under Article 33 of the GBER starting with the moment when the worker becomes disabled. If however the worker is already employed for two years before the company requests support, it is doubtful whether the condition of Article 33(4) is fulfilled.

153. Could the term "any given period" mean that a limited period is required or could the term "any given period" also be interpreted in the sense of a period of time as long as the validity of the employment contract?

Any given period in the context of Article 33(2) shall be interpreted as a period of time as long as the validity of the employment contract. The eligible cost base in Article 32(2) is stricter as this refers to the recruitment of disadvantaged workers that, after a certain period, are considered to have been duly integrated in the working market and no need of additional support exists.