The General Block Exemption Regulation 2014-2020 (GBER)

Roxana Laiu
Camelia Grozea
Bernhard Von Wendland

JASPERS Networking Platform State aid seminar
8 July 2014
The GBER 2014-2020

• The GBER 2014-2020 is a set of 43 exemptions that can be used to provide effective and compliant State aid.

• Aid under GBER can be provided without prior approval from the Commission.

• To use the GBER, the granting body must publish a scheme on the internet and complete an online form which goes to the Commission.
New Aid Categories

• New block exemptions include:
  - Aid to make good the damage caused by certain natural disasters
  - Social aid for passenger transport
  - Aid for broadband infrastructures
  - Aid for culture and heritage conservation
  - Aid for audio-visual works
  - Aid for sport and multifunctional recreational infrastructures
  - Aid for innovation clusters
  - Aid for process or organisational innovation
  - Aid for local infrastructure
General Provisions
(Articles 1-12 and 57-58)
When GBER applies

• Certain types of aid excluded in Article 1, such as:
  • Aid for export related activity
  • Some aid measures to the fishery and aquaculture sector
  • Some aid measures in the primary agricultural production sector
  • Aid to facilitate the closure of uncompetitive coal mines
  • Aid to undertakings in difficulty

• Notification thresholds – GBER does not cover aid above the levels set out in Article 4: such measures must be notified.

• Aid must be transparent (it is possible to calculate precisely the GGE of the aid ex ante).
Incentive Effect

State aid should encourage the beneficiary to undertake an activity in the common interest.

SMEs will be considered to show the incentive effect if they have not already started the activity.

Large enterprises must show material increase in scope, amount spent or speed of completion of the project.
Cumulation rules - State aid and EU-funding

- total amount of State aid per activity or project per undertaking taken into account
- EU-funding not controlled by MS not taken into account
- EU-funding and State aid for same eligible costs must not exceed most favourable funding rate laid down in EU-law
Specific Provisions (Articles 13-56)
Regional Aid
Regional Aid

Aim: to encourage investment into Assisted Areas (as listed in the national Regional Aid map).

Regional Investment Aid (Article 14)

Most common form of aid under GBER.

Allows for State aid to cover the costs of initial investment
Regional Aid

Eligible Costs: Investment costs in tangible/intangible assets and wage costs (up to 2yrs) arising as a result of investment.

Maintenance of investment (or jobs) in the region:
- 5 years for large enterprises
- 3 years for SMEs

Maximum aid amount is staggered – 100% up to €50m and 50% for €50-€100m

25% of investment should be from own contribution or external finance, but totally free of public support.
Regional Aid

Regional Operating Aid (Article 15)

Available in outermost and sparsely populated areas, as set out in national Regional Aid map.

Compensates for additional costs faced in such areas.

Up to 100% of additional costs, subject to annual cap at Article 15(2)(b).
Energy & Environment
Energy & Environment: aims

In line with Europe 2020 targets

• increase to environmental protection (beyond Union standards)
• more energy savings through energy efficiency measures
• leverage for the funds of public authorities (e.g. in energy efficiency projects related to buildings)
• promotion of renewable energy technologies
Energy & Environment: main changes

- Increase in the notification threshold from 7,5 Mio for investment aid to 15 Mio;
- Increase in aid intensities for aid to go beyond environmental EU standards and aid for energy efficiency;
- Up to 100% aid intensity for investment aid to RES granted in a bidding process.

New provisions as regards:
- Investment for energy efficiency in buildings;
- District heating and cooling infrastructure and generation;
- Waste management facilities;
- Energy Infrastructure.
Energy & Environment

Notification thresholds – aid received must be under these ceilings to be eligible for GBER:

- for investment aid for environmental protection excluding aid for the network in district heating: EUR 15 million per undertaking per investment project;
- for investment aid for the district heating or cooling distribution network: EUR 20 million per undertaking per investment project;
- for investment aid for energy infrastructure: EUR 50 million per undertaking, per investment project;

NB: the special provisions in the Environmental part shall apply to energy infrastructure and not the general provision regarding local infrastructure (Art. 56)
Insuring that the aid is limited to the minimum to achieve the environmental goal:

✓ Reflected in eligible cost calculation;
✓ For most categories of aid, cost compared to a counterfactual investment;
✓ Total investment costs are an option under investment aid for RES.
Energy & Environment - example

Investment aid for promotion of renewable energy sources (article 41)

- *e.g. investment for setting up a wind farm*
  - investment to be granted to new installations only
  - eligible costs will be the extra investment costs necessary to the generation capacity from renewable sources compared to conventional energy generation
  - aid intensity varies between 30-45% + regional bonuses

Aid can go to 100% intensity if granted in an open bidding procedure.
R&D&I Aid
R&D&I State-aid rules – architecture, eligible R&D&I-aid objectives

➢ *Today: focus on aid for research infrastructure and innovation clusters*
R&D&I State-aid rules 2014
Entry into force on 1 July 2014

- **General Block Exemption Regulation 2014-2020 (GBER):** R&D&I-aid for eligible objectives is compatible with internal market and exempt from notification requirement if in accordance with GBER (up to certain thresholds/’transparent’ aid instruments).

- **Framework for State Aid for Research, Development and Innovation 2014 (R&D&I-Framework):** applies to R&D&I-aid for eligible objectives that must be notified as it exceeds the GBER-thresholds/is awarded with ‘intransparent’ aid instruments.
Eligible R&D&I-objectives
...and one ‘access-to-finance’ objective

- R&D-project aid: fundamental research, industrial research, experimental development, feasibility studies (Art. 25 GBER)

- Investment aid for the construction and upgrade of research infrastructure (Art. 26 GBER)

- Investment aid, operating aid for innovation clusters (Art. 27 GBER)

- Innovation aid to SMEs: Aid for industrial property rights costs, aid for the secondment of highly qualified personnel, aid for innovation advisory and support services (Art.28 GBER)

- Aid for Process and organisational innovation: implementantion of a new or significantly improved production or delivery method (Art. 29 GBER)

- SME-access to finance: Aid for ‘innovative’ start-ups - unlisted; >5 years following registration; no profits distributed; either innovativeness confirmed by external expert or R&D-costs min. 10% of total operating costs; (Art. 22 (5) ; Art. 2 Nr. 80 GBER)
General Block Exemption Regulation (GBER) 2014

Notification thresholds higher than under GBER 2008!

R&D project aid
Investment aid for research infrastructures
Aid for innovation clusters
Innovation aid for SMEs; for young innovative enterprises
Aid for process and organisational innovation

--- Notification threshold ---

Allows ad-hoc aid for large enterprises. Large aid schemes not eligible. Only transparent aid instruments

R&D&I Framework 2014
✓ presence/absence of State aid
✓ all large individual R&D&I aid above notification thresholds
✓ Assessment criteria
✓ for large schemes – focus on evaluation by MS
## GBER 2014 – notification thresholds
(Art. 4 GBER)

<table>
<thead>
<tr>
<th>R&amp;D projects:</th>
<th>Previous rules</th>
<th>Art. 4 GBER 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Fundamental research</td>
<td>EUR 20 million</td>
<td>EUR 40 million</td>
</tr>
<tr>
<td>- Industrial research</td>
<td>EUR 10 million</td>
<td>EUR 20 million</td>
</tr>
<tr>
<td>- Experimental development</td>
<td>EUR 7.5 million</td>
<td>EUR 15 million</td>
</tr>
<tr>
<td>- Specific provisions</td>
<td>Double thresholds for EUREKA projects</td>
<td>Double thresholds for EUREKA and Article 185 and 187 Joint Undertakings 50% increase for repayable advances</td>
</tr>
</tbody>
</table>

| Feasibility studies | EUR 7.5 – 20 million depending on subsequent research category | EUR 7.5 million |
| Research infrastructure | NA | EUR 20 million |
| Innovation clusters | EUR 5 million per cluster | EUR 7.5 million per cluster |
| Process and organisational innovation | EUR 5 million per undertaking, per project | EUR 7.5 million per undertaking, per project |
| SME innovation aid | Different conditions for each category | EUR 5 million per undertaking, per project |
Investment aid for the construction and upgrade of research infrastructure

'research infrastructure' means
✓ facilities, resources and related services used by the scientific community
✓ to conduct research in their respective fields
✓ with scientific equipment, sets of instruments, knowledge-based resources (e.g. collections, archives, structured scientific information, enabling information and communication technology-based infrastructures, or any other entity of a unique nature essential to conduct research);
✓ may be 'single-sited' or 'distributed'.

Definition Art. 2 Nr. 91 GBER, in accordance with Art. 2(a) of Council Regulation 723/2009 of 25.6.2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC)
Investment aid for the construction and upgrade of research infrastructure - compatibility conditions:

- Only public financing for economic activities taken into account!
- Open, transparent and non-discriminatory access at market prices to the eligible infrastructure; preferential access for large private investors (>10%) is allowed (conditions: proportional, transparent)
- Eligible costs: investment costs in tangible and intangible assets
- Aid intensity: up to 50% of eligible costs
- Notification threshold: 20 million EUR/infrastructure (Conditions Art. 26 GBER)
Innovation clusters

‘Innovation clusters' means

- structures or organised groups of independent parties (e.g. innovative start-ups, small, medium and large enterprises, research and knowledge dissemination organisations, non-for-profit organisations)
- designed to stimulate innovative activity
- by promoting, sharing of facilities and exchange of knowledge and expertise and by contributing effectively to knowledge transfer, networking, information dissemination and collaboration among the undertakings and other organisations in the cluster

(Definition Art. 2 Nr. 92 GBER)
Aid for innovation clusters - compatibility conditions

- Aid granted exclusively to the legal entity operating the innovation cluster.
- Open, transparent and non-discriminatory access to the eligible cluster; access and participation fees shall correspond to the market price, or reflect costs; preferential access for large private investors (>10%) is allowed (conditions: proportional, transparent).
- **Investment-aid intensity** 50% basic; top-up of 15 percentage points for clusters in assisted areas Art. 107(3)(a) Treaty, resp. of 5 percentage points Article 107(3)(c) Treaty; investment in tangible and intangible assets.
- **Operating aid intensity** 50%; max. duration 10 years; personnel and administrative costs for cluster animation, marketing of the cluster, management of the cluster.
- Notification threshold: EUR 7.5 million per cluster (Conditions Art. 27 GBER)
Focus today: State aid and public funding for economic activities of research organisations and research infrastructure (2.1)

Indirect State aid to industry through R&D-services carried out by publicly financed research organisations (2.2.1)

Indirect State aid to industry in R&D-collaboration with publicly financed research organisations (2.2.2)

State aid and public R&D-procurement (2.3)

These R&D&I-specific explanations are complementary to, and more detailed than, those given in the forthcoming Communication on the Notion of Aid.
State Aid and ‘economic activity’

- State aid is selective in that it favours “undertakings” (Art. 107 (1) TFEU).
- Undertaking = Entity that carries out “economic activities”.
- "Economic activity" = Offering goods and/or services on a given market.
- Concept of "undertaking" covers any entity engaged in an economic activity.
- Concept of "undertaking" applies regardless of legal form, property ownership, and way of financing - consequently includes public undertakings.
- Consequently: Public funding to a research organisation's (e.g. university’s) or research infrastructure’s economic activities is subject to state-aid rules, if all other criteria of Art. 107 (1) TFEU are met.
Public funding for research organisations/infrastructure
- R&D&I-Framework 2014 (point 2.1.1)

- **Non-economic activities:**
  - **Primary activities:** Public education organised within the national educational system; independent R&D; wide dissemination of research results on a non-exclusive and non-discriminatory basis
  - **Knowledge transfer** conducted by the research organisation/infrastructure or jointly with/on behalf of other such entities; all profits reinvested in primary activities

- **Economic activities:** e.g. renting out equipment or laboratories to undertakings, R&D services, contract research for industry.
  - **Cross-subsidisation of economic activities is avoided** by separating costs/revenues/financing of economic from non-economic activities
  - **Lack of clear separation** → Entire research organisation and its funding are subject to State aid rules!
  - Due separation e.g. demonstrable in annual financial statements
Public funding for research organisations/infrastructure - R&D&I-Framework 2014 (point 2.1.1)

If RO/RI is both publicly and privately funded → State aid is present if

- public funding allocated to the relevant entity for a specific accounting period exceeds the costs of non-economic activities incurred in that period.

Example:

- Public funding = EUR 160 million (80% of the total costs) allocated to non-economic activities → no State aid

- Remaining EUR 40 million are financed through means that do not include State resources → no State aid

- If the public funding of the research infrastructure exceeds EUR 160 million (80% of the total costs) – presumed State aid (spill-over of public funding of economic activities)
Public funding for research organisations/infrastructure - R&D&I-Framework 2014

- Ancillary economic activities not subject to State-aid rules:
  - directly related to and necessary for the operation of the RO/RI
  - or intrinsically linked to RO/RI main non-economic use.
  - Must be limited in scope - consume exactly the same inputs as non-economic activities and allocated capacity is ≤ 20% of ‘relevant entity's’ overall annual capacity (point 2.1.1)

- No State aid to RO/RI if entity acts as an 'intermediary':
  - Any advantage through public funding is quantifiable and demonstrable, and is fully passed on to the final recipients (e.g. price-reduction)
    → State aid compatibility/de-minimis conditions at customer level,
  - and no further advantage for intermediary - selected with open tender procedure, or customers are entitled to acquire services from any intermediary. (point 2.1.2)
Compatibility criteria and assessment of large individual aid above the notification thresholds
– the R&D&I-Framework

Purpose: greater legal certainty – faster assessment process!
<table>
<thead>
<tr>
<th>Assessment principle</th>
<th>Assessment approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to increased R&amp;D&amp;I and need for State intervention (market failure)</td>
<td>Systematic identification of objective of common interest. Demonstration of general/specific market failure by MS for all notified cases, e.g. through sectoral comparison. Presumption of absence of market failure where there are similar projects in the market. Presumption of presence of market failure for EU funded projects.</td>
</tr>
<tr>
<td>Appropriateness</td>
<td>To be demonstrated; presumed for EU-funded project</td>
</tr>
<tr>
<td>Incentive effect</td>
<td>Aid application before start of works For large individual aids, MS to support counterfactual analysis of incentive effect with company- and industry-specific elements. Counterfactual scenario may even consist in &quot;the absence of an alternative project&quot; or in &quot;an alternative project that is wholly or partly carried out outside the Union.&quot;</td>
</tr>
<tr>
<td>Proportionality</td>
<td><strong>Where no alternative project exists:</strong> Aid must not exceed the minimum necessary to make the project sufficiently profitable. This is the case if the internal rate of return (IRR) is brought to a level that corresponds to sector or firm specific hurdle rates. <strong>Where a counterfactual project exists:</strong> Aid must not exceed the net extra costs established by comparing the expected net present values of both alternative investments. <strong>Where a counterfactual exists but is too remote from aided project:</strong> Hurdle-rate approach may apply. <strong>All relevant expected costs and benefits must be considered over the lifetime</strong></td>
</tr>
<tr>
<td>Negative effects</td>
<td>Analysis of distorting dynamic incentives, creation of market power and maintaining inefficient market structures. Analysis of choice of location. Analysis of manifest negative effects, in particular if violation of EU law (such as free movement of goods and services).</td>
</tr>
</tbody>
</table>
Thank you!
For info or further questions on this presentation, or on the activities of the JASPERS Networking Platform please contact:

Massimo Marra
JASPERS Networking Platform Senior Officer
ph: +352 4379 85007
m.marra@eib.org

www.jaspersnetwork.org
jaspersnetwork@eib.org