State Aid: European Commission General Block Exemption Regulation

Analysis Paper

1. General Block Exemption Regulation adopted in July 2008

End of August 2008 the *Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty* came into force. The so called 'General block exemption Regulation' (GBER) gives automatic approval for a range of aid measures and so allows EU-Member States to grant such aid without first notifying the Commission.

The GBER authorises aid in favour of SMEs, research, innovation, regional development, training, employment and risk capital. The Regulation also authorises environmental protection aid, aid measures promoting entrepreneurship (e.g. aid for young innovative businesses, aid for newly created small businesses in assisted regions) and measures tackling problems (e.g. difficulties in access to finance faced by female entrepreneurs). Member States are being encouraged to focus their state resources on aid that will be of real benefit to job creation and Europe's competitiveness. The GBER also foresees a section on training aids for disadvantaged and disabled workers.

2. State aid procedures modernisation and simplification started in 1998

Over the past decade the European Commission has worked on the modernisation and simplification of State aid procedures. A milestone was the adopted of Regulation No 994/98 of 7 May 1998, which enables the Commission to adopt so-called Block Exemption Regulations for State aid. These regulations empowered the Commission to declare specific categories of State aid compatible with the Treaty in case they fulfil certain conditions. That is to say that those were exempted from the requirement of prior notification and approval from the Commission. On the other hand EU-Member States are able to grant aid accordingly without the formal notification procedure, they only have to submit information sheets on the implemented aid.

"State Aid Action Plan"

In *2005* the five-year "State Aid Action Plan" was outlined to provide guiding principles for a comprehensive reform of state aid rules and procedures. In particular the document sets out how the Commission intends to use EC Treaty state aid rules to encourage Member States to contribute to the Strategy for Growth and Jobs by reducing overall aid levels while focusing remaining aid on improving the competitiveness of EU industry, creating sustainable jobs, ensuring social and regional cohesion, and improving public services.

The State Aid Action Plan is based on the following elements:

- less distortive and better targeted state aid, in line with the European Council's repeated declarations, so that public money is used effectively to the benefit of EU citizens in terms of improving economic efficiency, generating more growth and sustainable jobs, social and regional cohesion, improving services of general economic interest, sustainable development and cultural diversity,
- a more refined economic approach, so that less distortive aid, particularly where money is less easily available from financial markets, can be approved more easily and quickly and so that the Commission concentrates its resources on the cases liable to create more serious distortions of competition and trade,
- more streamlined and efficient procedures, better enforcement, higher predictability and enhanced transparency. For example, Member States currently have to notify the Commission most of the state subsidies they want to give. The Commission proposes to exempt more measures from this notification obligation and to simplify procedures,
- a shared responsibility between the Commission and Member States: the Commission cannot improve state aid rules and practice without the effective support of Member States and their full commitment to comply with their obligations to notify any envisaged aid and to enforce the rules properly.

De minimis Regulation

End of *2006* the Commission adopted a new '*de minimis regulation*', a Regulation exempting small subsidies from the obligation to notify them in advance for clearance by the Commission under EC Treaty state aid rules. This Regulation forms part of the 2005 State Aid Action Plan (see above).

Under this new *de minimis* Regulation, aid of up to €200,000, granted over any period of three years will not be considered as state aid. Loan guarantees will be covered to the extent that the guaranteed part of the loan does not exceed €1.5 million. Before that time the *de minimis* Regulation covered financial support of less than €100,000 over a period of 3 years. Contrary to the preceding Regulation, the new one will also cover the transport sector and the processing and marketing of agricultural products.

The 2006-Regulation will allow Member States to implement guarantee schemes in favour of SMEs without red tape and under legally secure conditions. Insofar the proposal complements the Guidelines on Risk Capital and the Framework on research & development & innovation which were adopted earlier in 2006.

3. General Block Exemption Regulation (GBER) – scope and contents

In a block exemption Regulation, the Commission declares that certain categories of state aid are compatible with the Single Market and shall not be subject to the requirement of prior notification laid down in Article 88(3) of the EC Treaty. Consequently, Member States may implement state aid measures which fulfil the conditions of the Regulation without having gone through the notification procedure.

The new General Block Exemption Regulation (GBER) consolidates into one text and harmonises the rules previously existing in five separate Regulations. The GBER enlarges the categories of state aid covered by the exemption. The rules give also a clear framework to allow Member States to grant aid targeted at creating jobs, boosting competitiveness and improving the environment without the Commission having to get involved at all.

This Small Business Act (adopted in June 2008) will be backed up as Member States will be allowed to support small and medium-sized enterprises (SMEs) at different stages of their development. All of the 26 categories of aid covered in the GBER can be provided to SMEs. By means of the GBER and in the frame of the "Better Regulation" agenda of the European Commission it also harmonises to the extent possible all horizontal aspects applying to the different aid areas concerned.

The GBER therefore *incorporates the content of existing state aid instruments* adopted by the Commission since 2001: aid to SMEs, research and development aid in favour of SMEs, aid for employment, training aid and regional aid. In addition, the Regulation integrates *five categories of aid* which had, so far, not been block exempted: environmental aid, innovation aid, research and development aid for large companies, aid in the form of risk capital and aid for enterprises newly created by female entrepreneurs. The Regulation also builds further on the Guidelines on state aid for environmental protection, by exempting from notification a set of varied subsidies promoting environmental protection.

The fact that a state aid measure is not covered by the GBER does not imply that it is going to be prohibited by the Commission: measures falling outside the scope of the GBER will merely remain subject to the standard obligation of prior notification to the Commission.

The new Regulation shall apply to the following categories of aid:

a. regional aid;
b. SME investment and employment aid;
c. aid for the creation of enterprises by female entrepreneurs;
d. aid for environmental protection;
e. aid for consultancy in favour of SMEs and SME participation in fairs;
f. aid in the form of risk capital;
g. aid for research, development and innovation;

h. training aid;
i. aid for disadvantaged or disabled workers.

4. Aid for disadvantaged or disabled workers

The GBER refers to many sectors which are of interest to the epr-members - it applies to virtually all sectors.

With regard to ***social aid*** *measures*: beyond aid allowing subsidizing employees working on new investments in SMEs or in assisted regions, the GBER approves aid that helps disabled or otherwise disadvantaged workers to find mainstream jobs. It also allows compensating, to the extent they constitute state aid, additional costs (special facilities for employees with wheelchairs, or information technology for visually impaired workers) incurred by companies when hiring disabled workers. The Regulation also favours aid for training workers, to the benefit of both employers and employees.

In order to ensure a better work life/family life balance, the GBER now foresees the possibility to subsidise employers for as regards child care and parent care costs incurred by their employees, including, in certain circumstances, costs relating to parental leave.

Especially *Section 9* of the Regulation foresees '***Aids for disadvantaged and disabled workers***' regarding

1. Aid for the recruitment of disadvantaged workers in the form of wage subsidies shall not exceed 50 % of the eligible costs.
2. Aid for the employment of disabled workers in the form of wage subsidies shall not exceed 75 % of the eligible costs.
3. Aid for compensating the additional costs of employing disabled workers shall not exceed 100 % of the eligible costs. The eligible costs shall be the following:
    a. costs of adapting premises;
    b. costs of employing staff for time spent solely on the assistance of the disabled workers;
    c. costs of adapting or acquiring equipment, or acquiring and validating software for use by disabled workers, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred if employing workers who are not disabled;
    d. where the beneficiary provides sheltered employment, the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result directly from the employment of disabled workers.

The promotion of training and the recruitment of disadvantaged and disabled workers and compensation of additional costs for the employment of disabled workers constitute a *central objective of the economic and social policies* of the Community and of its Member States.

Certain categories of disabled or disadvantaged workers still experience particular difficulty in entering the labour market. It is particularly important that aid for the employment of disabled and disadvantaged workers should have a positive effect on employment levels of those categories of workers and should not merely enable undertakings to reduce costs which they would otherwise have to bear. That aid should be exempt from prior notification when it is likely to assist those categories of workers in re-entering the job market or, as regards disabled workers, re-entering and staying in the job market.

Aid for the employment of disabled workers in the form of wage subsidies may be calculated on the basis of the specific degree of disability of the disabled worker concerned or may be provided as a lump sum provided that neither method leads to the aid exceeding the maximum aid intensity for each individual worker concerned.

5. Conclusions

The major differences between the existing block exemption Regulations and the new general block exemption Regulation are only a limited number of small-scale changes as regards *regional aid* (GBER integrates the BER or regional investment aid), for *investment and employment aid for SMEs*, the major change is in the increase of the applicable basic aid intensity from up to 15% for small and 7.5 % for medium-sized enterprises to 20% for small and 10% for medium-sized enterprises. The Regulation contains an important number of simplifications for SMEs. New are the *inclusion of environmental aid and aid in the form of risk capital*, the *extension of aid for research, development and innovation*.

In the field of *training* aid the GBER allows for a higher basic aid intensity to be provided in favour of general training for employees (increase from 50 % to 60%) and the existing rules concerning *employment aid* have been clarified and simplified in the GBER. The Regulation includes ***substantially increased aid possibilities in favour of disabled workers***, with higher aid intensities (increase from 60 to 75 %) and a notification ceiling which has doubled (€5 million/year to €10 million/year). The GBER also allows for the salary of severely disadvantaged workers to be subsidised for an increased period of two years. Overlaps between employment aid with other types of aid, mainly with regional aid and SME investment aid have been removed.

LINKS:

GBER: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:214:0003:01:EN:HTML / http://ec.europa.eu/comm/competition/state_aid/reform/reform.cfm /

Further information and all relevant documentation:
http://ec.europa.eu/competition/state_aid/reform/reform.html