

The General block exemption Regulation

Consultation paper

The purpose of the present consultation is to invite both **Member States** and **stakeholders** to provide comments on the application of the **General block exemption Regulation ('GBER')**. Those comments will provide valuable input for the review of the GBER in 2013.

The Commission invites Member States and stakeholders to submit their comments to DG Competition by **12/09/2012**.

1. Introduction

State funding meeting the criteria of Article 107(1) TFEU constitutes State aid and requires notification to the Commission. However, according to Art 109 TFEU, the Council may determine categories of aid that are exempt from the mandatory notification procedure set out in Article 108(3) TFEU.

In application of Art 109 TFEU, the Council, by adopting Regulation (EC) No. 994/98¹ ('Enabling Regulation') enabled the Commission to declare compatible with the internal market and exempt from the notification procedure aid in the following categories: aid in favour of SMEs, R&D, environmental protection, employment and training, and regional aid.

On the basis of the Enabling Regulation, the Commission adopted the GBER², in force since 29 August 2008.

The GBER simplifies the procedures for aid granting authorities at national, regional or local level. It allows the granting of a range of measures with horizontal objectives considered to be in the common interest.

The total amount of state aid granted through block exempted measures was in 2010 12.6 billion EUR. The latest version of the state aid scoreboard (autumn 2011)³ shows a continued increased use of block exemptions by Member States in terms of aggregate block exempted aid amounts.

On 8 May 2012, the Commission adopted a Communication⁴ on a State aid modernisation package ('SAM'), which shall launch and frame the political debate on the modernisation of State aid control. The review of the GBER is an important element of SAM.

The Commission invites the other Institutions, Member States and stakeholders to provide input for the revision of the GBER. The GBER contains a variety of measures, many of which are also covered by specific guidelines or frameworks (regional, environmental, risk capital and R&D&I aid). In order to ensure coherence in the revision of the policy for each type of aid, dedicated separate questionnaires will be prepared for the main types of aid (regional aid, aid for R&D&I, environmental aid, risk capital), covering both exempted and non-exempted aid. By contrast, this questionnaire will focus on general questions relating to the GBER as such and on the categories of aid only covered by the GBER (e.g. training aid, SME aid for consultancy and participation in

¹ OJEC L 142/1 of 14.5.1998.

² OJEU L 214/3 of 9.8.2008.

³ COM(2011) 848 final, http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html

⁴ http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

fairs, SME investment aid, aid for female entrepreneurs and disabled workers) and not by specific guidelines or frameworks. Overlaps were thus avoided to the extent possible, but respondents are invited to cross-reference replies in the parallel questionnaires if appropriate.

2. How to contribute to the consultation

The other Institutions, Member States and stakeholders are invited to respond to the questionnaire. Replies can be submitted in all official EU languages. Given the possible delays in translating comments submitted in certain languages, translations of the replies in one of the Commission's working languages (English, French or German), would be welcome. In addition, any comments beyond the scope of the questionnaire will be welcome.

Certain questions are intended specifically for public authorities or certain stakeholders and respondents are, thus, not required to address every question. If you are not concerned by a particular question, please reply "not applicable".

The deadline for the replies is **12/09/2012**. Replies should be sent to the European Commission, DG COMP, State aid registry, 1049 Brussels, "**HT.3365**", preferably via e-mail to Stateaidgreffe@ec.europa.eu.

The Commission services plan to make the replies to this questionnaire accessible on its website <http://ec.europa.eu/competition/consultations/open.html>. Therefore, if respondents do not wish their identity or parts of their responses to be divulged, this should be clearly indicated and a non-confidential version should be submitted at the same time. In the absence of any indication of confidential elements, DG COMP will assume that the response contains none and that it can be published in its entirety.

QUESTIONNAIRE

ABOUT YOU

Specific privacy statement: Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form.

For rules on data protection on the EUROPA website, please see: http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata

01. Do you object to the disclosure of your identity?

Yes No

02. Does any of the exceptions foreseen in Article 4 of Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁵ apply to your response? If so, please indicate clearly which parts should not be divulged, justify the need for such confidential treatment and provide also a non-confidential version of your response for publication on the Commission website.

Please provide your contact details below.

<i>Name</i>	CARS - Center for Antitrust and Regulatory Studies
<i>Organisation represented</i>	University of Warsaw, Faculty of Management
<i>Main business activities</i>	CARS conducts cross- and inter-disciplinary academic research and development as well as implementation projects concerning competition protection and sector-specific regulation in the market economy. It also prepares one-off and periodical publications, organises or participates in the organisation of conferences, seminars, workshops and training courses. CARS also acts as a patron of post-graduate studies.
<i>Location (country)</i>	Poland
<i>E-mail address:</i>	cars@mail.wz.uw.edu.pl

NOTE: The sections on the GBER common provisions and specific provisions (sections D and E) follow the structure of the GBER itself. You are requested to follow the order of the questions, even though you are not required to reply to all questions. You can also submit additional information that you consider relevant and which does not fit any specific question.

⁵ OJ L 145, 31 May 2001, p. 43.

SECTION A: GENERAL GBER POLICY QUESTIONS

A.1. The GBER in context of the Enabling Regulation and the Guidelines

Questions aiming at all respondents:

1. What are the main difficulties you have encountered in applying individual aid measures on the basis of a scheme which is block exempted?

The application of aid measures on the basis of block exempted schemes creates large variety of practical problems. Some of them are stipulated below:

a. A substantial part of difficulties results from problems with interpretation of the relevant definitions provided in the GBER. Their general character and wide scope causes many interpretation problems. The wording of the definitions provided in the GBER shall be more precise. They should contain practical examples and interpretative guidelines. One of the major sources of problems is the application of the definition of the SME's, as stipulated in the Annex I to the GBER, in specific national legal and factual reality. These problems appear in the context of any type of aid provided in the GBER, which associates higher intensity of aid with a classification of an undertaking as a SME or which is addressed exclusively to the SME's. The problem is particularly evident in case of regional and training aid, very popular in Poland. These problems have been described in detail in point 24 and in sections of questionnaire devoted to relevant types of aid.

b. Practical observations lead to the conclusion, that relevant public authorities have many problems with proper evaluation of the fulfillment of the incentive effect by aid granted to large enterprises. It is particularly evident in case of local authorities as they lack professional capacity to provide prudent and correct incentive effect assessment. Accordingly, in order to improve legal certainty, the Commission should take under consideration issuing explanatory guidelines on the incentive effect containing clarification remarks and practical examples.

c. There is a problem with meeting criteria of art. 13.6 of the GBER in case of public undertakings (financial contribution of at least 25 % of the eligible costs through beneficiaries' own resources or by external financing free of any public support). The typical situation in Poland is that public enterprise receives capital injection from its public owner and that capital corresponds to needs of an investment project which is to be co-financed through the EU funds. There is a question how should the owners' financial contribution be classified?

A.2. The GBER's impact on state aid policy

Questions aiming at public authorities:

2. Can you provide examples how the design of support measures (schemes) has been influenced by the GBER as compared to similar measures introduced under previous rules (for example, with regard to thresholds of measures, assessment of incentive effect)?

not applicable

3. Has the entry into force of the GBER brought about a necessity to modify the scrutiny of aid applications?

Yes No

If yes, can you quantify and substantiate the modifications?

not applicable

Questions aiming at all respondents:

4. Based on your experience with designing aid measures, do you consider that the measures allowed under the current GBER better target market failures and / or equity objectives than previous block exemption rules?

Yes No

If yes, please substantiate and give concrete examples.

We consider the condition of the incentive effect as the most important instrument of ensuring that state aid measures allowed under the current GBER are better targeted. This condition, at least as it refers to large enterprises, provides for relatively strict criteria of state aid compatibility. This condition clearly promotes efficiency of state aid measures, though there are still many problems connected with practical application of the incentive effect condition.

GBER covers large variety of types of aid, which had not been previously covered by the block exemption regulations (i.e. environmental aid, research and development and innovation aid). Widening the scope of block exemptions can contribute to deal with market failures.

5. Please describe what you consider from your perspective as the main positive economic effects of support granted for companies under the current GBER.

It is virtually impossible to specify real economic effects of state aid measures granted according to the GBER, without previous in-depth empirical research. Though in CARS' opinion there are some areas, within the scope of which certain positive economic effects can be identified:

- a. Relatively easy access to the block exempted training aid improves professional qualifications of personnel for national economy
- b. The regional investment aid, particularly granted through the European Funds, strongly contributes to the competitiveness of Polish economy, taken under consideration that all our regions are covered by the article 107.3.a TFEU.
- c. The employment aid measures are of significant importance in Poland as they enable conducting a variety of unemployment policy instruments.

A.3. Negative effects of block exempted state aid

Questions aiming at all respondents:

6. What are the main potential negative effects of block exempted State aid in context of distortions of competition and effects on trade? Please substantiate and give concrete examples.

Apparently majority of potential negative effects of block exempted aid on trade and competition result from erroneous application of GBER's provisions by public authorities, while the state aid control exercised by the European Commission is very limited, not to say virtually non-existent. Such effects can result from erroneous or neglectful evaluation of the

fulfillment of the incentive effect by large enterprises or from incorrect interpretation of the definitions provided in the GBER. Accordingly there are still many incidents of granting state aid which do not address any market failure.

7. Do you consider that the application of the GBER or some of its provisions have led, in practice, to affected trading conditions to an extent which is contrary to the common interest ?

Yes No

For the purposes of your reply, please consider in particular the following circumstances: market proximity of the supported activity; amount of aid; size of the beneficiary; market power of the beneficiary; level of positive externalities; definition of the relevant geographic and product market; competitive structure of the market concerned (number of competitors; barriers to entry; existence of market power). Please substantiate your view with concrete examples and data.

8. Which of the block exempted aid categories would you consider to have a high risk of affecting trading conditions to an extent contrary to the common interest? In view of your experience in block-exempted aid schemes, do you consider that large, in terms of overall budget, state aid schemes do generally have a higher potential for distortion? Please substantiate and give concrete examples.

not applicable

9. Do you consider that the safeguards in place in the GBER offer sufficient guarantees in order to avoid that trading conditions are affected to an extent contrary to the common interest?

not applicable

SECTION B: THE USE OF THE GBER

B.1. Rationale and assessment of policies under GBER

Questions aiming at public authorities:

10. To what extent has the GBER been used for sectoral measures? In which sectors did you mainly apply measures covered by the GBER?

not applicable

11. Do EU programmes for funding influence your Member State's strategy for block exempted aid?

Yes No

If so, could you specify which programmes and in which way?

not applicable

Questions aiming at all respondents

12. How important is the level of private co-funding for block exempted aid measures in your Member State? Does private participation often exceed minimum intensities specified in the GBER? What changes in the level of private funding have you noted over recent years?

Private participation of the recipients of aid is typically on a minimum level as provided in the relevant GBER's provisions. In everyday's practice it can, as well reach slightly higher level. Additionally we can observe that many beneficiaries in Poland try to obtain public financing even for their co-funding of investments. In such a case the beneficiary applies for public financing of the investment (grant) and in the same time apply for other financial instrument (subsidized loan, guarantee of the credit) to another public authority. This financial instrument is used as a part of private co-financing of the investment. From this point of view, the problem of cumulation of aid within the same project co-financed from public resources should be explained in details.

B.2. Statistical data

Questions aiming at public authorities:

13. Can you provide a comparative estimate of the magnitude of the total amount of aid spent under the GBER for 2010 in relation to the total amount of aid spent under *de minimis* rules (excluding aid measures between 200,000 and 500,000 € which temporarily were considered to constitute compatible aid under the Temporary Framework ⁶)?

not applicable

14. Could you indicate the aggregate amount of block exempted aid under the GBER (in million EUR) granted by your authorities (local/regional/Member State) between 29 August 2008 and 31 December 2011, on a yearly basis. Please indicate the breakdown of this aggregate block exempted aid for approved aid scheme or for individual aid. Please provide, if possible, a breakdown of aggregate block exempted aid granted to large undertakings and to SMEs.

not applicable

15. Please indicate which aid forms were most used for block exemptions: grants, interest rate subsidies, loans, repayable advances, guarantee schemes, fiscal measures, other and provide policy reasons for the preferences.

not applicable

16. Please provide a ranking of aid categories (aid objectives, e.g. Art 13.1, 14, 15 etc. of the GBER) most used within your Member State or region (please quantify the number of measures and aggregate aid amounts) and provide policy reasons for the preferences.

not applicable

17. Do particular factors prevent your authorities from granting a larger proportion of aid through block exempted measures?

Yes No

⁶ The *de minimis* threshold amounts to 200.000 € per undertaking over three years. See Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid

If so, please specify and give concrete examples.

not applicable

B.3. The GBER and the crisis

Questions aiming at all respondents:

18. To what extent has the economic and financial crisis had an impact on the granting of block exempted state aid in your Member State?

If applicable, can you describe such impact and indicate if, and how, your authorities have adapted their State aid granting policy in response?

In our opinion the financial crises has not significantly influenced the policy of Polish authorities within the scope of granting of block exempted aid.

19. Do you consider that the GBER is a useful instrument to ensure funding for SMEs? If so, which aid measures are most useful?

The GBER widely refers to aid for the SME's and provides for large variety of instruments which can be useful in supporting their development. Apparently, of the greatest importance are: regional investment aid, training and employment aid. In CARS' opinion the instrument of start-ups' financing, as provided in the article 14, seems to be very useful. Unfortunately it is rarely applied in Poland.

SECTION C: EFFECTIVENESS AND EVALUATION OF BLOCK EXEMPTED AID

Questions aiming at public authorities:

20. How do you evaluate the effectiveness of block exempted aid granted in your Member State in relation to the objectives pursued by the measures in question? Do you carry out evaluation analysis of individual measures and/or programmes? Please substantiate your answer.

not applicable

Questions aiming at all respondents:

21. Please make available any relevant studies or reports that describe the effectiveness of block exempted aid in your country.

We do not have any information about any relevant studies or reports describing the effectiveness of block exempted aid in Poland.

22. According to your experience, which are the most appropriate types of State aid instruments to be block exempted (e.g. grants, interest rate subsidies, loans, repayable advances, guarantee schemes, fiscal measures)? Please substantiate your answer.

The GBER should allow granting aid through large variety of instruments in order to adjust them to specific needs and social and economic environment.

Among all aid instruments direct grants are least effective. Grant is in fact free financing which may strongly affect operational efficiency of aid beneficiaries. Taking that into account, granting of aid in form of direct grants should be exceptional and limited to SMEs

rather than to large enterprises. Different access to capital in case of SMEs and large enterprises suggest special treatment of the former, especially taking into account regional investment aid, which is very important category in Poland. Limitation of direct grants only to large enterprises should be considered. Such a solution has strong economic justification. Limited access to capital is typical market failure. Efforts of correlation of state aid targets with economic justification, which were made by including of incentive effect criterion in the GBER, have not brought sufficient results. Application of repayable instrument rather than direct grants would increase state aid efficiency.

From that point of view repayable aid instruments are much more effective: preferential loans and guarantees. They force higher efficiency of the beneficiaries, as they need to repay at least part of received capital.

It is important that guarantee schemes are allowed to be exempted on the basis of block exemption. These instruments are often very effective as they basically do not consist in direct financial grants but they often enable the companies to incur a debt for concrete investments for which without those instruments it could be difficult to receive e.g. bank credits. Moreover, the development of start-ups could be stimulated by fiscal measures as well.

SECTION D: THE GBER – COMMON PROVISIONS

D.1. Scope of block exempted aid (Article 1)

Questions aiming at all respondents:

23. Based on your experience with designing aid measures, do you consider the current scope of measures covered by the GBER to have been appropriately framed?

Yes No

If not, please explain what difficulties you have encountered.

Polish experiences in EU funds distribution suggest that the scope of the GBER should be extended by adding new aid categories. It might be considered whether the GBER should be extended to areas such as culture, heritage and sport. Classification of the measures granted in those sectors as a state aid is arguable, since many of them do not affect trade between the Member States. This particularly concerns local sport and leisure infrastructure (stadiums, thematic parks, ski lifts, observation towers, leisure spots), organisation of culture events (music and theatre festivals), monuments conservation. The abovementioned areas in majority cover areas in which the EU Commission's decision practice proves no effect on trade because of limited catchment area of consumers / visitors (the areas mentioned in the Commission notice on a simplified procedure for the treatment of certain types of State aid).

Furthermore, according to Article 1(3)(d) the GBER does not apply to aid favoring activities in the coal sector with the exception of training aid, research and development and innovation aid and environmental aid. The GBER, however, does not define the coal sector, as it is the case of, e.g., tourism activities (Article 2(25)), steel sector (Article 2(29)) or synthetic fibers sector (Article 2(30)). The clear definition of this term would enable the more precise determination of the scope of the application of the GBER in the coal sector. The same concerns the definition of the shipbuilding sector (Article 1(3)(f)).

D.2. Definitions (Article 2)

Questions aiming at all respondents:

24. Based on your experience with the application of the GBER, are there any definitions (of e.g. ad hoc aid, tangible assets) in need of further clarifications or change? Please describe any particular difficulties you have encountered in applying specific definitions.

There are many practical problems connected with the application of the definitions provided by the GBER, inter alia:

a. Within the structure of the Polish SME sector, civil partnerships are widespread and play important role. According to Polish Civil Law, they do not possess any legal identity, which can be separated from legal; personality of its partners. It is quite common that natural persons being partners in civil partnerships are engaged, at the same time, in the individual economic activity, which is conducted separately. Accordingly, aid grantors and aid benefactors often face very complex problem of classification of such entities (i.e. civil partnerships and its partners) as SMEs. In such a case it is inevitable to apply properly article 3.3 subparagraphs 3 and 4 of the Annex I of the GBER, which requires taking into account personal relations between the undertakings in question and therefore to perform full definition of their relevant markets. Public authorities in Poland, particularly local ones, do not have sufficient qualifications to conduct such an assessment. Our practical observations confirm that there are still numerous errors in law resulting from improper application of this part of the SMEs definition.

b. The definition of the SMEs does not cover all relevant circumstances that may influence the classification of the employee as a member of staff headcount. For instance there is no certainty as to a classification of employees enjoying unpaid leaves. The interpretation applied by aid grantors in Poland is not uniform. Some of them include such employees in staff headcount, some of them not. Apparently, addition of a new category - employees enjoying unpaid leaves – to the list of employees excluded from the staff headcount as provided in art. 5 of the Annex I to the GBER, seems to be necessary to improve legal certainty.

c. The definition of staff (Article 5 of Annex I of GBER) is also a source of certain interpretative problems. In particular there is no uniform interpretation of the notion persons working for the enterprise being subordinated to it and deemed to be employees under national law, what results in uncertainties as to how consider persons employed on different non-standard basis, e.g. contract of mandate or hired through temporary employment agency. It is an important issue since, e.g. the Polish law clearly defines who may be considered as an employee and this may not cover all persons performing work for an undertaking. It would be desirable to clarify the definition of staff by listing also other than standard contract of employment basis for employment.

d. In Polish language version of the Annex I to the GBER, there is a serious translation mistake which in turn causes many interpretation problems. One of the categories of entities included in staff headcount, provided in art. 5 (d) of the Annex I to the GBER – “partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise” was translated as “partnerzy prowadzący regularną działalność w przedsiębiorstwie i czerpiący z niego korzyści finansowe”. The legal term “partner” used in this provision was literally translated into “partner”, while the Polish equivalent for “partner” is “wspólnik”. This in turn become a source of many practical troubles as in Polish legal language the word “partner” has narrow scope and refers exclusively to a partner to a limited

liability partnership. This in turn provoked some aid grantors to make their own interpretation according to which the category provided in art. 5 (d) covers large variety of natural persons collaborating with an undertaking on the basis of civil contracts. Due to this erroneous interpretation, taking under consideration great popularity of outsourcing services in Poland, we presume that significant group of the SME's has been deprived of its SME status.

e. One of the most significant problems connected with the definition of the SMEs, but not arising directly from its application, is not adequacy of SMEs criteria to Polish economic reality, as well as to the economic reality of other new Member States. Comparing to EU-15, statistically Polish undertakings hire much more personnel while their turnover and balance sheet total is significantly lower. That is why in almost every case in order to classify of an undertaking as a SME, mere calculation of the staff headcount is sufficient. Assessment of the financial criteria is normally pointless. Apparently, as for today, after the EU enlargement to 27 (and soon to 28) Member States, we consider required the revision of SMEs criteria, to make them more adequate to the new reality.

f. The definition of the SMEs not clearly enough explains as to what extent take under consideration the relations of an undertaking which had just joined or left a capital group, with its members. Some public authorities and aid recipients in Poland apply incorrect interpretation, according to which, micro, small and medium – sized enterprise maintains its previous status, regardless they have just joined (or left) a big capital group. According to them, the relevant thresholds were exceeded only once, and pursuant to the art. 4.2. of the Annex I to the GBER, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods.

g. The definition of the „partner enterprises”, provided in Polish language version of the Annex I to the GBER (art. 3.2) has been incorrectly translated into Polish, and arguably is a source of significant interpretative problems. Polish definition of partner enterprises incorrectly refers to enterprises active on markets which are placed upstream/downstream from the market on which the undertaking in question is active. In other language versions this definition does not refer at all to markets which are adjacent, instead refers exclusively to investment relations between upstream/downstream undertakings.

h. In Article 4(1) of Annex I of GBER, determining data used for the staff headcount and the financial amounts and reference period for the purpose of definition of SME, it seems necessary to clarify in Polish language version of GBER that date are to relate to the latest closed (not approved) accounting period

D.3. Transparency of aid (Article 5)

25. Is the current distinction between transparent and non-transparent aid adequate?

Yes No

Please describe any difficulties you have encountered.

26. In particular, do you consider that Articles 5(1)(d) and 25 address well the specificity of fiscal measures?

Yes No

Please explain and describe the main difficulties you have encountered.

D.4. Cumulation (Article 7)

Questions aiming at all respondents:

27. Based on your experience with designing aid measures, are the provisions on cumulation appropriately designed?

Yes No

What are the difficulties you have encountered?

D.5. Incentive effect (Article 8)

Questions aiming at public authorities:

28. How do the authorities in your country verify the existence of the incentive effect for SMEs?

not applicable

29. How do the authorities in your country verify the existence of the incentive effect for large undertakings? Do you typically make enquiries into the counterfactual (i.e. check what the firm concerned would do in the absence of aid)? Please provide examples.

not applicable

30. Do you measure the effect of additional public spending in leveraging private expenditure? If so, how do you do that and what are the results?

not applicable

31. Based on your experience in designing aid measures, do you consider that Article 8(4) addresses well the specificity of fiscal measures? Please describe any difficulties you have encountered.

Yes No

Please explain.

not applicable

Questions aiming at all respondents:

32. In your experience with the application of the formal requirements set out in Article 8, including the distinction between SMEs and large undertakings, have these requirements adequately ensured that the aid is necessary to carry out the project in a given location or to carry out a project of given size /scope /total amount spent/ speed?

Yes No

If not, please explain why. Please describe the main difficulties you have encountered.

The attempts to establish a link between state aid measures and economic rationale by including incentive effect in the GBER has not brought sufficient results. Obviously the obligation of filing the application before work on the project or activity has started, should

be still valid. Though the implementation of the obligation in question is practically reduced merely to formal assessment. Ex-ante analysis increases the administrative burden for enterprises and the administration. Additionally, the provisions concerning the proof of an incentive effect bear a potential for legal uncertainty; in particular, the difference between material increase in project size and material increase in the scope of the project is not clear (para. 3). As large enterprises can only receive state aid for restricted, economically desirable objectives (Article 8(3) of the GBER), i.e. for projects in assisted areas, the aid should also be considered to have an incentive effect, if the beneficiary has submitted an application before the project has started.

In practice, decision makers have problems while setting whether alternative scenarios presented by enterprises applying for aid are reliable. Political and social factors remain crucial considerations on which the decision as to grant state aid or not is based, while incentive effect is treated merely as an administrative cumbersome. An amendment to the incentive effect evaluation process or even giving up this obligation could be considered. Alternatively certain other, simplified instruments of improving economic efficiency could be included in the GBER (vide: limitation of direct grants in case of large enterprises).

Article 8 paragraph 2 uses the words „before work on the project or activity has started” („przed rozpoczęciem prac nad projektem”). The interpretation of this phrase is problematic. It is unclear when this phase starts and what activities should not be undertaken before submitting the application in order to fulfill this requirement.

33. In particular, have you encountered difficulties in applying Article 8(4) in relation to fiscal measures?

Yes No

Please describe any difficulties you have encountered.

Sometimes it is hard to define at what moment starts the phase of realization, to which Article 8 paragraph 4 refers. Especially in case of complex projects sometimes e.g. arranging the enterprises' place of business is planned and prepared thoroughly having in mind a planned new activity for which the enterprise then applies for aid. Then the question is whether and when such activities should be qualified as realization of the project and, as a consequence, disqualify the enterprise.

D.6. Formal requirements (Articles 9 - 11)

34. Have you encountered difficulties in applying the provisions on transparency, monitoring and annual reporting? Please explain.

Yes No

not applicable

35. In particular, is the obligation of the Member State to publish on the internet the full text of the aid scheme sufficient (Article 9(2))?

Yes No

Please explain.

not applicable

D.7. Specific conditions applicable to investment aid (Article 12)

36. Have you encountered difficulties in applying the conditions applicable to investment aid?

Yes No

Please describe the main difficulties you have encountered.

SECTION E: GBER – SPECIFIC PROVISIONS

Please note that the types of aid which are covered by the current GBER but not mentioned in the present section (i.e. regional, environmental and R&D&I aid, risk capital) are subject to a separate questionnaire and review. The questionnaires for regional aid and aid R&D&I have already been published⁷.

Questions aiming at all respondents:

E.1. SME investment and employment aid (Article 15)

37. Have you encountered difficulties in applying Article 15(2) concerning aid intensity?

Yes No

If you have encountered difficulties with the application of this provision, please explain.

38. Have you encountered difficulties in applying Article 15(3) and (4) concerning the eligible costs?

Yes No

If you have encountered difficulties with these provisions, please explain.

E.2. Aid for small enterprises newly created by female entrepreneurs (Article 16)

Questions aiming at public authorities:

39. Have you granted any aid under this provision?

Yes No

If yes, please provide examples.

not applicable

40. Have you encountered difficulties in applying this condition?

Yes No

If yes, please provide examples.

not applicable

⁷ <http://ec.europa.eu/competition/consultations/open.html>

Questions aiming at all respondents:

41. Have you encountered difficulties in applying Article 16(3) on aid amounts?

Yes No

If you have encountered difficulties with this provision, please explain.

not applicable

42. Have you encountered difficulties in applying Article 16(4) on aid intensity?

Yes No

If you have encountered difficulties with this provision, please explain.

not applicable

43. Have you encountered difficulties in applying Article 16(5) concerning the eligible costs?

Yes No

If you have encountered difficulties with this provision, please explain.

Difficulties with defining what are legal, advisory, consultancy and administrative costs directly related to the creation of the small enterprise. The problem concerns in particular legal and advisory costs. If legal and advisory services concern e.g. the directions of shaping the enterprise activity from the legal or managerial point of view and they are provided after several days, several weeks, several months after the creation of the enterprise – are they at all and until what moment directly related to the creation of the small enterprise (similar problem by Article 14 paragraph 5).

Article 16 paragraph 5 point e – it is unclear what costs are eligible as costs relating to parental leave. Moreover a remark to make is that the French translation of GBER does not contain explicit indication that these costs may be eligible.

Questions aiming at all respondents:

E.3. Aid for consultancy in favour of SMEs and SME participation in fairs (Articles 26-27)

44. Have you encountered difficulties in applying Articles 26(2) and 27(2) on aid intensities?

Yes No

If you have encountered difficulties with these provisions, please explain.

45. Have you encountered difficulties in applying Articles 26(3) and 27(3) concerning the eligible costs?

Yes No

If you have encountered difficulties with these provisions, please explain.

Article 26 paragraph 3: Problems with interpretation of the phrase „The services concerned shall not be a continuous or periodic activity”. Does this mean that the aid cannot concern e.g. a series of meetings with an outside consultant within a given period of time? Furthermore, it is not explicit whether the aid may relate to the outside legal service.

E.4. Training Aid (Articles 38-39)

46. What is your experience with the application of Article 38 GBER and in particular its definitions? ? Please explain any difficulties you have encountered.

Distinction between the notions of general and specific training is problematic when it comes to so called soft trainings (i.e. covering communication and personal skills training) dedicated for employees of a specific enterprise. Moreover, interpretation applied by aid grantors is not consistent in this area. Polish language version of these definitions suggests distinction between professional (specific) and other trainings (general). That distinction should be abandoned in order to simplify the regulation. This could be accompanied by setting new training aid intensities.

47. Have you encountered difficulties in applying Article 39(2) on aid intensities?

Yes No

If you have encountered difficulties with this provision, please explain.

48. Have you encountered difficulties in applying Article 39(4) concerning the eligible costs?

Yes No

If you have encountered difficulties with this provision, please explain.

If a participant does not arrive in the venue are the eligible cost borne or not? This creates technical problems while clearing the training program.

E.5. Aid for disadvantaged and disabled workers (Articles 40-42)

49. Have you encountered difficulties in applying Articles 40(2) and 41(2) on aid intensities?

Yes No

If you have encountered difficulties with these provisions, please explain.

50. Have you encountered difficulties in applying Articles 40(3) and 41(3) concerning eligible costs?

Yes No

If you have encountered difficulties with these provisions, please explain.

not applicable

SECTION F: MISCELLANEA

Questions aiming at all respondents:

51. Do you have any other comments on the application of the GBER on issues other than those covered in the previous questions?

This remark does not relate directly to the application of the GBER but rather to its construction: the GBER is a very complex piece of legislation and certainly not an easy read. For instance, as for each type of aid, the provisions included in both – chapter one (Common Provisions) and these included in a specific chapter devoted to the type of aid in question must be applied. This complexity and unclarity may result in reluctance of national authorities to actually use it. Therefore it would be highly desirable to simplify its provisions in order to maximize its use.

The regulation of the following articles of the GBER - 6 (individual notification thresholds), 12 (Specific conditions applicable to investment aid), and partly 1 (Scope) and 2 (definitions) should be moved to articles dedicated to specific aid categories.

Article 18 and 20: The difference between intensity in Article 18 paragraph 4 and Article 20 paragraph 2 is hard to understand especially in the situations when the Member States has higher standards for environmental protection and the enterprise wishing to fulfill them could qualify for aid on the basis of Article 18. Then the EU adopts more stringent standards and one year before the date of entry into force of this standard the aid should be assessed on the basis of Article 20 with a much lower level of intensity. Firstly, it is doubtful from the point of view of common interest why we allow the exemption on “better” conditions if it is a part of Member State’s environmental policy than when it aims at reaching Community standards. Moreover, the application of Article 18 paragraph 2 point a poses also some difficulties when a directive gives a choice of level of environmental protection for the Member States’ discretion – then it is unclear whether Article 18 may be applied only when a given enterprise as a result of the project would exceed the level chosen by the Member State if it was not the highest one from the levels proposed in the directive but higher than the minimum or only if it will exceed the highest level from the ones proposed in the directive.

GBER promotes investments that lead to obtaining more environmental-friendly equipment than it is foreseen by European standards, while for significant number of companies it is still very hard to meet those standards; in our opinion GBER should allow to prepare block exempted programmes that will promote meeting European standards, inter alia in public transport, heating sector.

The GBER provides for two instruments of limitation of amount of aid: maximum aid thresholds for individual projects within certain aid category and regulation concerning large investment projects. In practice it is hard to determine whether one enterprise supported by state aid for a longer period, allocates aid to one or more projects. Combining that observation with a fact that large enterprises possess better possibilities of gaining aid rather than smaller firms, introduction of thresholds of total amounts of aid in specific period of time should be considered. The threshold could include following aid categories: regional aid (investment and employment), aid for disadvantaged workers and environment protection aid. Together with a concept of the single investment project, this mechanism would lessen threat of competition distortion. At the same time this would improve position of the SMEs in while competing for aid measures. Vast majority of the Member States have already introduced electronic aid registers, and accordingly the control of fulfillment of the total aid thresholds would not cause additional excessive administrative cumbersome.

52. Please provide copies of any documents or studies which may be relevant for assessing the application of the GBER and contributing to the reflection on its future revision.

Please indicate whether the Commission services may contact you for further details on the information submitted, if required.

Yes No

THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE.