



The General Block Exemption Regulation, its content and application

Thematic discussion paper

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May 2023



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Directorate G — Funds: Programming and Implementation

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THE GENERAL BLOCK EXEMPTION REGULATION, ITS CONTENT AND APPLICATION. SPECIFIC FOCUS ON ACCESS TO FINANCE FOR THE SOCIAL ECONOMY

Manuscript completed in May 2023

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1 Introduction

The European Union (EU) has established a system of graduated control of State aid which is based on the principle of “small on small and big on big”.¹ Small amounts of aid or public measures that do not involve novel elements are subject to lighter scrutiny than large amounts of aid or public measures which introduce new means of supporting enterprises.

In line with this approach, the European Commission (hereinafter the Commission) which is responsible for monitoring all aid measures and assessing new measures before they are implemented, adopted in 2014 the so-called General Block Exemption Regulation (GBER, or Regulation 651/2014). The purpose of the GBER is to relieve Member States from the obligation to notify the Commission of routine aid measures that pose little threat to the integrity of the internal market. National measures that are designed in conformity with the provisions of the GBER are considered more likely to generate benefits and less likely to cause any undue distortion to competition in the internal market.

Since 2014, the GBER has become an indispensable tool for implementing Member States’ policies that support enterprises and the social economy. According to the 2020 edition of the Commission’s State Aid Scoreboard, in 2019, nearly 96% of new aid measures were implemented on the basis of the GBER.² However, the 2021 edition of the Scoreboard showed that in 2020, the share of GBER-based measures dropped to 66%.³ This was because Member States adopted many other measures to combat the effects of the COVID-19 pandemic, which had to be notified to the Commission for prior authorisation. The 2022 edition of the Scoreboard has again showed an increased use of the GBER by the Member States with 2365 new GBER-based measures representing 83% of non-crisis aid measures.⁴

The purpose of this paper is to outline the role and structure of the GBER, present its main provisions – and especially those that are of relevance to the social economy –, explain how the amount of aid that may be embedded in certain aid instruments can be quantified, identify good practices, and indicate how a risk capital measure may be designed in conformity with the GBER.

2 Setting the scene

2.1 System of State aid control

The objective of the EU rules on State aid is to protect the integrity of the internal market by preventing distortions of competition caused by public subsidies to enterprises. Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) declares “any” State aid, in “any form”, to be incompatible with the internal market. This means that State aid is, in principle, prohibited.

Any public measure, irrespective of its objective or form, that satisfies all the criteria defined in Article 107(1) TFEU is categorised as State aid. However, the prohibition contained in

¹ See State Aid Scoreboard, 2022, p.74. It can be accessed at:

https://competition-policy.ec.europa.eu/system/files/2023-04/state_aid_scoreboard_note_2022_0.pdf

See also the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU State Aid Modernisation (SAM), COM(2012) 209 final, 8/5/2012. It can be accessed at:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52012DC0209>

² State Aid Scoreboard, 2020, p.37. It can be accessed at:

https://competition-policy.ec.europa.eu/system/files/2023-04/state_aid_scoreboard_note_2020.pdf

³ State Aid Scoreboard, 2021, p.60. It can be accessed at:

https://competition-policy.ec.europa.eu/system/files/2023-04/state_aid_scoreboard_note_2021.pdf

⁴ State Aid Scoreboard, 2022, p.22.

Article 107(1) TFEU is not absolute. State aid may be exempted from this prohibition if it fulfils the conditions which are laid down in Article 93, Article 106(2) or Article 107(2 and 3) of the TFEU.

There are at least two reasons why State aid may be exempted. First, the market does not always function perfectly or efficiently. Therefore, it may be necessary for public authorities to intervene in the economy with aid instruments to remedy market failure. Second, the TFEU, by exempting certain types of State aid, implicitly acknowledges that the benefits from pursuing legitimate public policy objectives may outweigh the costs caused by the distortion of competition in the internal market.

Thus, it is always necessary to assess whether aid indeed falls within one of the exemption categories. This assessment is the exclusive task of the Commission. For this purpose, the Treaty establishes a system of prior control of public measures that may constitute State aid. Article 108(3) TFEU imposes an obligation on Member States to notify the Commission of all new public measures containing State aid. Member States must refrain from implementing their aid measures until the Commission authorises them to do so. This is the “standstill” obligation.

An important consequence of the requirement for prior notification of all new aid to the Commission is that non-notified measures are automatically illegal. A measure in this context means both “schemes” – which provide for multiple aid awards – and “individual aid” – which is granted to particular enterprises or “undertakings”⁵. National courts are required by EU law to suspend non-notified aid measures and may order recovery of the aid amount. Recovery in this context means repayment of the illegal aid with interest from the date it was granted.

2.2 The concept of State aid

The concept of State aid is defined in Article 107(1) TFEU, which reads as follows:

“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”

As mentioned earlier, the prohibition of State aid is not absolute because Article 107(1) starts with the words “save as otherwise provided”. The second paragraph of Article 107 defines categories of aid that are considered to be compatible with the internal market such as, for example, aid to individuals in the context of social policy or aid to make good the damage caused by natural disasters or exceptional occurrences. The third paragraph of Article 107 defines categories of aid that may be compatible with the internal market. As also mentioned earlier, the Commission enjoys exclusive competence to assess the compatibility of such aid whose objective may be, for example, regional development, promotion of an important European project, remedy of a serious economic disturbance, development of a certain economic activity or promotion of cultural and heritage conservation.⁶

It is well-established in the case law that Article 107(1) lays down four criteria that together define what constitutes State aid:

1. State resources are transferred to an undertaking,

⁵ All competition rules, including those on State aid, refer to “undertakings”. An undertaking is any entity that carries out economic activities, regardless of its legal status and the way it is financed.

⁶ The exception in Articles 93 and 106(2) TFEU are not examined in this paper because they are not covered by the GBER.

2. the recipient undertaking obtains an advantage, in the form of a reduction of its normal costs, that it would not have enjoyed in the absence of State intervention,
3. the advantage is selectively offered only to certain undertakings instead of all undertakings that are in a comparable situation, and
4. the recipient undertaking operates in a sector where there is cross-border trade, and the aid distorts competition by placing the recipient in a more favourable position than its competitors.

The Court of Justice of the EU has ruled that the concept of State aid is “objective” in the sense that it does not depend on the motives or reasons for which a public authority grants State aid, its policy objectives or social aims. A public measure that intends, for example, to provide financing to small entrepreneurs, or to remedy market failure, or stimulate the creation of new knowledge, or support poor regions can very well be categorised as State aid. What matters is whether the four criteria outlined above are satisfied regardless of the public need for State intervention.

It is important to note, however, that the aims, objectives or targets of public measures are relevant and taken into account at the stage where the Commission assesses the compatibility of the aid with the internal market.

2.3 The purpose of the GBER

In order to relieve Member States from the obligation and administrative burden of notification, the Commission has adopted “block exemption” regulations and a decision on services of general economic interest (SGEI) that allow Member States to implement State aid measures without prior notification to, and approval by, the Commission.

The GBER is the most important of these block exemption regulations. It defines conditions for State aid measures that ensure that the benefits they generate outweigh the cost of the inevitable distortion they cause in the internal market. The GBER also lays down thresholds for the amounts of State aid that are exempted from prior notification. Any award of aid that exceeds the relevant threshold must be notified to the Commission for individual assessment.

The provisions of the GBER are both fully binding and exhaustive: Member States must comply with all the provisions that apply to the State aid measure they intend to implement.⁷ They may not pick and choose. It also means that compliance with the relevant provisions ensures the compatibility of the aid with the internal market: such State aid measures do not need to satisfy any other criteria. Therefore, the GBER lays down simple provisions that apply uniformly in all Member States so that all public measures that are implemented based on the GBER conform with the same rules.⁸

The GBER is a very useful tool for Member States also because it has a very wide scope. It defines conditions for the compatibility of State aid measures that fall into all categories of exemption in paragraphs 2 and 3 of Article 107 of the Treaty.

However, it also contains a few limitations. For example, it excludes “undertakings in difficulty”⁹ or undertakings that have not yet fully repaid aid that the Commission deemed to be incompatible with the internal market. The GBER also does not apply to aid for primary

⁷ C-585/17, *Dilly's Wellnesshotel*, EU:C:2019:969, paragraph 67; T-255/11, *Austria v European Commission*, EU:T:2014:1060, paragraphs 201-203

⁸ T-671/14, *BMW v European Commission*, EU:T:2017:599, paragraph 172; C-585/17, *Dilly's Wellnesshotel*, EU:C:2019:969, paragraph 72.

⁹ The GBER defines more precisely when an undertaking is considered to be in difficulty, but it should be broadly understood to be an undertaking that is likely to fail without any State assistance because it has lost most of its capital or it has very high indebtedness and/or very low liquidity.

agricultural products and fisheries, as there are separate block exemption regulations for them.

In a Communication that was published on 9 March 2023, the Commission announced extensive amendments to the GBER.¹⁰ A 100-page annex to the Communication contained the legal text of a draft regulation with the amendments. The regulation will come into force when it is published in the Official Journal.

Those amendments aim to:

- Ensure consistency between the GBER and new State aid guidelines.
- Bring the GBER in line with the EU policy priorities as expressed in the European Green Deal¹¹ and the Industrial and Digital Strategy¹².
- Enable Member States to support economic recovery from the effects of the COVID-19 pandemic and counteract the negative impact of Russia's invasion of Ukraine.

Some of the main changes, as listed in the Communication, are as follows:

- An extension and facilitation of the possibilities for aid in the area of environmental protection and energy.
- An extension of the possibilities for training and reskilling via an increase of the notification threshold for training aid to EUR 3 million.
- The introduction of new articles to block exempt aid involved in measures set up by Member States to regulate prices for energy (electricity, gas and heat produced from natural gas or electricity).
- A very significant increase in notification thresholds for environmental aid as well as aid for research, development and innovation (RDI) projects.
- More broadly aligning the provisions of the GBER with the new Regional Aid Guidelines; the Climate, Energy and Environmental State aid Guidelines; the Risk Finance Guidelines; the Research, Development and Innovation Framework and the Broadband Guidelines.¹³
- A prolongation of the GBER until the end of 2026 to provide for legal certainty and regulatory stability.

2.4 Structure of the GBER

The GBER contains a total of 76 articles divided into four chapters:

- Chapter I, with nine articles, contains the “general provisions” that apply to all State aid measures that fall within its scope.
- Chapter II, with three articles, lays down certain obligations concerning information that must be provided by Member States to the Commission, keeping of records and information that Member States must publish.

¹⁰ The Communication, C(2023) 1712 final, that also summarises the main amendments can be accessed at: https://competition-policy.ec.europa.eu/system/files/2023-03/GBER_amendment_2023_EC_communication_0.pdf

¹¹ Available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

¹² Available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy_en.

¹³ The text of the guidelines can be accessed at: https://competition-policy.ec.europa.eu/state-aid/legislation/horizontal-rules_en

- Chapter III, with 61 articles, is the longest chapter. It defines the “specific provisions” for the different categories and types of State aid, which are arranged in 16 sections.
- Chapter IV, with three articles, contains the “final provisions” on transitional measures and the dates for the start and expiry of the GBER.

The amendment announced on 9 March 2023 introduces ten new articles, raising the total to 86, and extends the period of validity of the GBER from 31 December 2023 to 31 December 2026.

The GBER also has four annexes, respectively, on:

- the definition of “small and medium-sized enterprises” (SMEs);
- the information that must be provided to the Commission;
- the publication and transparency of State aid measures; and
- a list of critical raw materials.

In order for State aid measures to benefit from the exemption from the notification obligation, they must comply with all of the relevant provisions of the GBER. These are the common provisions in Chapter I and the applicable specific provisions in Chapter III. However, the public authorities that use the GBER must comply with all provisions of the GBER as EU regulations are binding in their entirety on all Member States.

2.5 Main common provisions

Chapter I contains the general provisions, describing the scope of the GBER (Art. 1) and the definitions of the various concepts and terms which are used in the Regulation (Art. 2). Aid schemes, individual aid in schemes and ad hoc aid are deemed to be compatible with the internal market and are exempted from prior notification to the Commission if they fulfil all the conditions of Chapter I and the relevant specific conditions in Chapter III. Moreover, the GBER does not apply to aid awards that exceed certain thresholds. In other words, Member States must notify the Commission of any individual aid award that exceeds the relevant threshold (Art.4). The GBER requires that aid is “transparent” (Art. 5). This means that it must be possible to calculate precisely the gross grant equivalent (GGE) of the aid *ex ante* without any need to undertake a risk assessment. A grant is transparent as its GGE is equal to the amount of the grant. However, a loan, for example, in principle is not transparent because there is always the risk of default of the borrower. Therefore, Article 5 also explains how the GGE may be calculated for aid in a form other than a grant, such as a loan, guarantee, risk finance, tax exemption, repayable advance, etc. For example, in the case of loans, Article 5 stipulates that Member States use a uniform method that is based on the “reference rate” defined by the Commission.¹⁴

Box 1: Gross Grant Equivalent (GGE)

According to Article 2(22) of the GBER, the GGE of State aid is the amount of aid that had been provided in the form of a grant before any deduction of taxes. In other words, if the aid is provided in a form other than an outright grant, the amount of aid – that is embedded in that form of support – has to be quantified.

For example, the GGE of a loan provided at a zero rate of interest is the difference between the market rate of interest and the zero rate multiplied by the principal of the loan (a more detailed explanation can be found in section 3.6).

¹⁴ See the Commission Communication on the revision of the method for setting the reference and discount rates. It was published in the Official Journal, OJ C 14, 19/1/2008. It can be accessed at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC0119%2801%29>

Box 2: Access to finance – definitions

Grant: Although it is not defined in the GBER, it should be understood as any amount of aid that is not reimbursable.

Loan: An agreement that obliges the lender to make available to the borrower an amount of money for a specified period of time, which must be repaid by the borrower under pre-determined terms.

Guarantee: It is a written commitment to assume responsibility for all or part of another party's loan or debt.

Equity: It is the provision of capital to an undertaking in return for the ownership of a corresponding share of that undertaking.

Risk finance: It is the provision of loans, guarantees, equity or a mix thereof to an undertaking for the purpose of making new investments.

Source: Article 2 of the GBER (see points 66-82).

Chapter I also lays down one of the most fundamental criteria for the compatibility of State aid with the internal market (Art. 6). Accordingly, State aid must have an “incentive effect”. This means that the aid is capable of changing the behaviour of the recipient. If aid cannot change the behaviour of the recipient, the public policy objective of the aid measure cannot be achieved and, as a consequence, public resources are wasted. For all aid recipients, regardless of their size, the aid application must be submitted before the aided investment is made or before the start of work on the aided project. For ad hoc aid to large enterprises, Member States must, in addition, verify that the aid recipient does something extra such as, for example, carrying out an otherwise unviable project or activity, or widening its scope or accelerating its implementation.

The calculation of “eligible costs” and the “aid intensity” are explained in the following Article (Art. 7). All State aid has to remain below the maximum allowable rate of aid intensity or threshold defined for each category of aid by the specific provisions in chapter III. The aid intensity is normally the grant amount of aid expressed as a percentage of eligible costs. For example, aid of EUR 300,000 to support investment of EUR 1,200,000 is equivalent to aid intensity of 25%. In certain cases where no eligible costs are identified, such as risk finance, the maximum allowable aid is a fixed amount.

Public funds must be taken into account for the purpose of complying with the individual notification thresholds and the rates of aid intensity or the maximum aid amounts (Art. 8). Funds paid or controlled by public authorities are State resources. EU resources, such as structural and investment funds that are managed at the national level, do come under the control of the State and therefore count as State aid. However, EU funds that are granted directly to undertakings without transiting through a public authority or an entity controlled by the State do not count as State resources and must not be considered for the purpose of cumulating all public assistance. Therefore, funds “centrally” managed by an EU institution or agency must be excluded from funds whose management is “shared” between the Commission and Member States.

Member States are required to publish their measures (both schemes and ad hoc aid) as well as information on each individual award that exceeds EUR 500,000 (Art. 9). The amendments announced by the Commission on 9 March 2023 lower the threshold for publication of individual awards to EUR 100,000.

Chapter II outlines the monitoring requirements. Member States should submit summary information on each State aid measure to the Commission within 20 days of its entry into force (Art. 11). This means that even though the purpose of the GBER is to relieve Member States from the obligation of prior notification to and authorisation by the Commission,

Member States still need to inform the Commission about the aid measures they implement on the basis of the GBER. In addition, they have to submit annual reports.

The Commission verifies that Member States implement the GBER correctly through *ex post* monitoring in accordance with Article 12 of the GBER. For this purpose, Member States must keep records for ten years of all the State aid they grant. For schemes that provide for multiple awards, the 10-year period starts on the date of the last award.

3 GBER and the social economy

3.1 Specific provisions of importance to the social economy

The specific provisions that are reviewed in this section also include the amendments to the GBER that were announced in March 2023. The most important provisions of relevance to the social economy are grouped in this section into four categories: i) access to finance, ii) training, skills and access to the labour market, iii) support of SMEs and innovation, and iv) local infrastructure.

3.2 Access to finance

Risk finance is a general term that covers the typical means by which undertakings, and in particular SMEs, finance their operations. They do so with capital invested by their owners or with credit provided by banks. Loans to SMEs are often backed by guarantees obtained from third parties in order to reduce the risk borne by the lender. The GBER incentivises access to finance to SMEs and start-ups by corporate and private investors through loans, guarantees, equity or a mix of these financial instruments.

Article 21: Risk finance

The objective of Article 21 is to incentivise private investment in riskier but commercially viable SMEs. The private investors receive an advantage that constitutes State aid, because, for example, the public co-investor accepts more risk or delayed remuneration, but the investments are expected to be profitable. The text of Article 21 has been updated extensively over the years. The presentation of its main provisions below takes into account the revision announced in March 2023.

Risk finance may take the form of loans, guarantees, equity or a combination thereof. The beneficiaries must be unlisted SMEs which were not registered for more than ten years or undertook their first commercial sale or certain environmentally friendly investments within the previous seven years.

The risk finance must be provided only through financial intermediaries or fund managers. This implies that loans, guarantees or equity granted directly by public authorities to undertakings cannot be considered risk finance under the GBER. It further implies that such loans, guarantees or equity must be free of State aid (i.e. they comply with the market economy investor principle or the *de minimis* Regulation). Moreover, if they contain State aid, they must be granted based on a different provision of the GBER and, therefore, must comply with the conditions laid down in that provision or must be notified to the Commission for individual assessment.

Financial intermediaries and fund managers must be selected through an open, transparent and non-discriminatory procedure. They must make profit-driven decisions on the basis of viable business plans.

The total amount of risk finance that may be granted to any single undertaking has been raised from EUR 15 million to EUR 16.5 million. This amount is not the GGE of the aid.

Instead, it is the maximum nominal amount of equity or loan or the nominal amount of the underlying loan in case of guarantees.

Risk and profit must be shared between the public and private investors, but they may be skewed in favour of the private investors in order to incentivise them to invest. However, the losses borne first by the public investor are subject to certain limits and preference must be given to asymmetric profit sharing rather than asymmetric loss sharing. The participation of private investors must exceed certain thresholds that vary with the age of the recipient SME. These thresholds range from a minimum of 10% for SMEs that have not started their operations to a minimum of 60% for SMEs that carry out certain environmentally friendly investments. The thresholds are lower for recipient SMEs in assisted areas under Article 107(3)(a) TFEU or are included in the recovery and resilience plans of Member States or are supported by European structural funds.

Box 3: Fictional examples - Aid with a financial intermediary

A Member State sets up a Fund of EUR 100 million in order to support social enterprises. After an open selection process, a private bank is chosen to act as the financial intermediary.

- The medium-sized social enterprise “Good Food” active in bio and local food supply seeks fresh capital. The first commercial sale of Good Food was in 2019. It is, therefore eligible for funding. After a due diligence process carried out by the intermediary, Good Food receives EUR 5 million of new equity, of which EUR 3 million is from the Fund and EUR 2 million is from a private investor. However, the Fund accepts to bear a first loss up to 25% of the total investment. This condition is not acceptable to a private investor, hence the injection constitutes State aid, even though the investment is expected to be profitable as per Article 21(15) of the GBER.
- A social enterprise called “Slow Fashion”, registered in 2020, intends to open a large shop for circular and ethical clothes. It needs a loan of EUR 2 million. Slow Fashion has not made any commercial sale so far, it is therefore eligible for funding. After due diligence carried out by the intermediary, it can receive the sum, from which EUR 1.8 million will be contributed by the Fund and EUR 0.2 million by a private investor. The Fund accepts not to receive any interest in the first year of the loan. This would not be acceptable to a private creditor, but the investment is expected to be profitable.
- Suppose Slow Fashion, from the above example, was not seeking a loan but a guarantee on a loan from a private bank. In that case, the Fund would provide a guarantee not exceeding 80% of the loan's principal, but it charges a premium below the corresponding market rate.

Source: The examples are based on those presented in the “Social economy and State aid for access to finance” consultation paper for the Expert group on social economy and social enterprises (GECES)

Article 21(a): Risk finance aid to SMEs in the form of tax incentives for private investors

This is a new article that was added by the amendment of the GBER announced in March 2023.

The eligible private investors must be natural persons. That is, they must not qualify as undertakings. For example, a private investor that acts as a “business angel” and is involved in the day-to-day management of an undertaking is considered to be an undertaking itself and would not be eligible to receive aid under Article 21(a).

The conditions of Article 21(a) are, to a certain extent, similar to those of Article 21, especially with respect to the eligible SMEs and the maximum amount of risk finance.

However, there are also significant differences, such as, for example, that it is not necessary that the risk finance is provided via a financial intermediary. Nonetheless, Member States may choose to incentivise investment by private individuals via measures operated by financial intermediaries.

Another difference between the current version of Article 21 and the forthcoming Article 21(a) is that the latter lays down maximum thresholds for the tax relief that may be granted to individuals. Such thresholds do not currently exist. The future thresholds will range between 20% and 50% of the invested amount, depending on the age of the recipient SME and the environmental friendliness of the investment. An additional bonus of 15% may be granted for investments in SMEs in Article 107(3)(a) regions or SMEs that are supported by the recovery and resilience plans.

Box 4: Fictional example - Aid without a financial intermediary

Alternatively to the setting-up of the Fund (see Box 3), the Member State announces that investments up to EUR 50,000 in social companies and other SMEs, made by private investors, are deductible from personal income tax. Furthermore, when the shares are sold, any profits are exempted from capital gains tax. For newly established social enterprises that have not yet sold any product, the combined relief from income tax and capital gains tax may not exceed EUR 25,000, corresponding to the maximum permitted aid intensity of 50% of the invested amount, which in this case is EUR 50,000.

Source: The example is based on those presented in the "Social economy and State aid for access to finance" consultation paper for the Expert group on social economy and social enterprises (GECES)

Article 22: Start-ups

GBER defines start-ups as small, unlisted undertakings that, in general, are registered for less than five years. The maximum amounts of aid fixed by the 2023 amendment of the GBER are as follows: grants (up to EUR 0.5 million), loans (up to EUR 1.1 million), guarantees (up to EUR 1.65 million), equity (up to EUR 0.5 million) or tax incentives (up to EUR 0.5 million). Higher amounts are allowed for investments in start-ups located in assisted areas under Article 107(3)(a) or (c) TFEU.

For small innovative enterprises, the amounts indicated above in brackets may be doubled. An innovative enterprise is one that develops new products or spends more than 10% of its operating costs on research and development.

A new feature introduced by the 2023 revision of the GBER is that State aid up to EUR 1 million may now support the transfer of intellectual property rights from research organisations to eligible undertakings. A research organisation is an entity that carries out independent research for the advancement of scientific knowledge or for educational purposes and therefore is not classified as an undertaking. A typical but not exclusive example of research organisation is a publicly funded university or research institute.

Box 5: Fictional examples - Aid for start-ups

- The small social enterprise "COMP4U" aims to provide computer skills to disadvantaged groups. COMP4U was registered in 2019, therefore it is eligible for funding under Article 22 of the GBER. It receives a loan from a local authority with below market rate of interest of 0.5% per year. Because COMP4U operates in an area that is eligible for assistance under Article 107(3)(c), the amount of the loan (with a duration of 10 years) can be up to EUR 1.65 million.
- The small social enterprise "Flora For Ever", active in a big city since 2021, delivers flowers with bikers at homes and offices. The enterprise is located in an assisted area. It can receive a guarantee from the regional government covering 80% of a loan (10 years) of up to EUR 1.65 million. The premium for the guarantee is lower than the rate charged by private banks.
- The small social enterprise "Unlimited recycling", recently registered in a Member State, collects and resells parts from scrapped cars. It is located in an Article 107(3)(a) region.

Therefore, it can receive a grant (or a capital injection) of up to EUR 1 million from the national authorities.

Source: The examples are based on those presented in the "Social economy and State aid for access to finance" consultation paper for the Expert group on social economy and social enterprises (GECES)

3.3 Training, skills and access to the labour market

The transition to a greener and more digital economy requires investment in new technologies and the upgrading of labour skills. Therefore, the GBER incentivises the training of workers. In addition, it defines how Member States may support the employment of disadvantaged or disabled workers.

Article 31: Training

Undertakings may receive State aid to support the training of their employees. The maximum aid intensity is 50% of the eligible costs. The aid intensity may be raised by 10 percentage points for the training of workers with disabilities or disadvantaged workers and by 10 and 20 percentage points for medium-sized enterprises and small enterprises, respectively. However, the maximum permissible aid intensity for all purposes is capped at 70%.

The eligible costs include personnel costs, operating costs, travel and accommodation costs and the cost of materials used in training incurred by both the trainer and the trainees.

It is important to note that no aid may be granted for training to satisfy mandatory standards or to acquire legally required qualifications and certificates, as such, aid lacks incentive effect.

Individual training aid must be notified to the Commission if it exceeds EUR 3 million per training project.

Article 32: Recruitment of disadvantaged workers

GBER defines in Article 2(4) who may be regarded as a "disadvantaged" worker as a person who:

- is not in regular paid employment for the previous six months, or
- is between 15 and 24 years of age, or
- is over 50 years of age, or
- has no secondary or professional qualifications, or
- is single with dependents, or
- is a member of an ethnic minority.

Aid for the recruitment of disadvantaged workers may be granted in the form of wage subsidies, up to 50% of the eligible costs.

The eligible costs are the wage costs over a 12-month period or a 24-month period in the case of severely disadvantaged workers such as those that are not in regular employment for at least 24 months. If the period of employment is less than 12 or 24 months, the aid must be reduced pro rata. However, recruited workers must be entitled to employment for at least the minimum period that is laid down in national law.

Individual aid for the recruitment of disadvantaged workers must be notified to the Commission if it exceeds EUR 5.5 million per undertaking, per year.

Article 33: Employment of workers with disabilities

Article 2(3) of the GBER defines who may be regarded as a worker with "disabilities". Accordingly, it is a person recognised by national law to have long-term physical, mental, intellectual, or sensory impairments.

Aid may be granted in the form of wage subsidies, up to 75% of the eligible costs.

The eligible costs are the wage costs for any period during which the worker is employed.

Hired workers must be entitled to employment for at least the minimum period that is laid down in national law.

Individual aid for the employment of workers with disabilities must be notified to the Commission if it exceeds EUR 11 million per undertaking, per year.

Article 34: Compensation of additional costs of employing workers with disabilities

The eligible costs are the expenses incurred as a result of adapting premises, employing staff solely to assist workers with disabilities, adapting or acquiring special equipment, transporting workers with disabilities to their working place and for work-related activities, rehabilitation, etc. The aid intensity may be up to 100% of the eligible costs.

Aid to compensate for the additional costs of employing workers with disabilities must be notified to the Commission if it exceeds EUR 11 million per undertaking, per year.

Article 35: Compensation of the costs of assistance provided to disadvantaged workers

The objective of the aid is to support the disadvantaged worker's autonomy and adaptation to the work environment.

The aid intensity may not exceed 50% of the eligible costs. The eligible costs are the expenses incurred as a result of employing staff solely to assist disadvantaged workers and training such staff in assisting disadvantaged workers.

Aid to compensate for the costs of assistance provided to disadvantaged workers must be notified to the Commission if it exceeds EUR 5.5 million per undertaking, per year.

3.4 SMEs & innovation

Most innovative companies in the EU are medium-sized enterprises.¹⁵ Support of the innovative activities of SMEs is therefore an important contributor to the sustainable growth of the EU economy.

Article 17: SMEs

The purpose of the aid is to support new investments by SMEs which are undertakings that fulfil the conditions of the definition in Annex I of the GBER. In general, an undertaking is classified as an SME when it employs fewer than 250 persons and has an annual turnover not exceeding EUR 50 million and/or an annual balance sheet not exceeding EUR 43 million.

The aid intensity may not exceed 20% of the eligible investment costs for small enterprises or 10% for medium-sized enterprises. The investment may be granted regardless of whether the recipient SME is located in an assisted or non-assisted region.

The eligible costs are i) the costs of investment in tangible assets (e.g. building, machinery, etc.) or intangible assets (e.g. trademarks, licences, etc.) purchased at market prices and ii) the wage cost of jobs directly created by the investment, calculated over a period of two years. The jobs created by the investment must be counted in terms of the full-time equivalent.

Aid for replacement investment is not allowed. The intangible assets and the new jobs must be maintained for a period of at least three years.

¹⁵ Eurostat, Innovation profiles of enterprises, January 2023.

Box 6: Combining aid for SMEs

The aid for investment and new jobs linked to investment can be combined but may not exceed the higher amount of either investment aid or employment aid.

For example, a small enterprise that makes an investment that costs EUR 600,000 may receive aid of up to EUR 120,000 ($= \text{EUR } 600,000 \times 0.2$). If the two-year wage cost of four new jobs created as a result of the investment is EUR 200,000, the same enterprise may instead receive aid of up to EUR 40,000 ($= \text{EUR } 200,000 \times 0.2$). However, the maximum amount it may receive is still EUR 120,000, not EUR 160,000. But, it can receive a combination of investment and employment aid up to a total of EUR 120,000, such as, for example, EUR 90,000 for investment costs plus EUR 30,000 for wage costs.

Investment aid to SMEs must be notified to the Commission if it exceeds EUR 8.25 million per undertaking per investment project.

Article 28: Innovation aid for SMEs

Aid up to 50% of eligible costs may support innovation activities within SMEs. The eligible costs are the expenses of acquiring and defending patents and other intangible assets such as trademarks, the costs of the secondment of highly qualified personnel from a research organisation or a large enterprise and the cost of obtaining innovation advisory and support services.

Innovation aid for SMEs must be notified to the Commission if it exceeds EUR 10 million per undertaking, per project.

Article 29: Process & organisational innovation

Aid may be granted to both large enterprises and SMEs. For SMEs, the aid intensity may not exceed 50% of the eligible costs, while for large enterprises, the aid intensity ceiling is 15% provided that they collaborate with SMEs which bear at least 30% of the costs.

The eligible costs include the following:

- Personnel;
- Instruments, equipment, buildings and land to the extent and for the period used for the innovation activities;
- Contractual research, and patents bought or licensed from third parties; and
- Overheads and other operating expenses.

Aid for process and organisational innovation must be notified to the Commission if it exceeds EUR 12.5 million per undertaking, per project.

3.5 Infrastructure that supports the social economy

Article 56: Local infrastructure

The GBER contains no definition of local infrastructure. However, this term should be understood to refer to infrastructure that is limited to an area or region and does not cover the whole or a large part of a Member State. It is not a purely local project for which State aid would not affect intra-EU trade, though. For example, buildings, office facilities, exhibition spaces or cultural centres can be considered as local infrastructure.

Article 56 does not apply to infrastructure that falls under other provisions of the GBER, such as ports, airports, energy networks, broadband networks, recharging stations for electric vehicles, district heating networks, sports infrastructure, etc.

Nor does Article 56 apply to “dedicated” infrastructure. This is infrastructure which is designed for the needs of a particular undertaking or is used exclusively by a particular

undertaking. Therefore, Article 56 requires that the aided infrastructure is open to users on non-discriminatory terms and at market rates.

Only investment aid is permitted by this Article. Unlike the Articles reviewed above, which fix either the rate of aid intensity or the nominal amount of funds, aid to local infrastructure is limited to whatever amount is necessary for the infrastructure to become commercially viable. Therefore, the aid amount may not exceed the difference, if any, between the initial investment costs and the discounted flow of operating profit over the economic life of the infrastructure. The expected net operating profit, which is the difference between operating revenue and operating costs, has to be estimated in advance. If it cannot be reasonably calculated in advance, then Member States must put in place a “claw-back” mechanism to prevent future overcompensation.

Nevertheless, investment aid for local infrastructure must be notified to the Commission if it exceeds EUR 11 million or if the total costs exceed EUR 22 million for the same infrastructure.

3.6 Calculation of the Gross Grant Equivalent (GGE)

The GBER allows Member States to choose the form of the aid they provide. For example, Member States may support SMEs through grants, loans, guarantees, renting out of office space or provision of free services. In all cases, the **gross grant equivalent** (GGE) of the aid embedded in different forms of public support must be calculated to ensure that the aid does not exceed the intensity rate defined in the relevant specific provision of the GBER. This is because Article 5 of the GBER requires aid to be “transparent” which means that its GGE must be known in advance.

Indeed, if State aid exceeds the relevant aid intensity or any other threshold it cannot benefit from the exemption provided by the GBER. If such aid is granted, then it is automatically illegal. Member States must avoid such illegality and must notify to the Commission any aid that falls outside the scope of the GBER.

Therefore, another reason why the GGE of the aid has to be calculated is to determine whether an award exceeds the threshold for individual notification to the Commission. Please note that some specific provisions of the GBER, such as Article 21, do not require calculation of the GGE. This is because Article 21 lays down a nominal maximum amount of EUR 16.5 million per undertaking.

Naturally, the GGE of a grant is the same as the amount of the grant. However, the amount of aid embedded, for example, in a loan is not the principal of the loan, because 1) a loan is repayable, 2) interest is charged, and 3) there is a non-negligible risk that the borrower may default. Therefore, the amount of aid embedded in a loan depends on whether the interest rate that is charged corresponds to the market rate, the risk assumed by the State and any collateral that may be offered by the borrower that mitigates the loss for the lender in case of default.

3.6.1 Loans

The GGE of State aid in a loan is the difference between the market rate of interest and the rate of interest that is actually charged multiplied by the outstanding principal of the loan for each year of the duration of the loan and discounted to the date of the granting of the loan. That is:

$$\text{GGE} = (\text{market rate of interest} - \text{actual interest rate}) \times \text{outstanding loan principal}$$

The annual amount of the GGE must then be discounted to the present value; i.e. on the date the loan is granted. GBER stipulates that the GGE of the aid in a loan should be

calculated using the “reference” rate (Article 5(2)(b) of the GBER). This approach ensures uniform practices in all Member States.

The 2008 Commission Communication on reference and discount rates defines the methodology that has to be used by Member States.¹⁶ Accordingly, the reference rate is:

$$\text{Reference rate} = \text{base rate} + \text{risk margin}$$

The base rate is determined by the Commission and revised periodically.¹⁷

The discount rate that is used to derive present values is:

$$\text{Discount rate} = \text{base rate} + 1 \text{ percentage point}$$

The risk margin depends on the credit rating of the borrower and the quality of its collateral. The risk margin can be derived from the table in the 2008 Communication, which provides a matrix of possible combinations of credit ratings and qualities of collateral.

When a rating from credit-rating agencies is not available, other ratings can be used, such as those developed by banks or other lenders.

If a rating is not available at all, for example, because the borrower is a start-up, at least 400 basis points must be added to the base rate.¹⁸ The risk margin is inversely proportional to the credit rating and the quality of the collateral that can be offered by the borrower.

Lastly, it is clear from the Commission’s decisional practice that the values in the table of the 2008 Communication cannot be used to calculate the GGE of State aid in subordinated loans or loans without collateral.¹⁹

Box 7: Calculation of the GGE of aid in a loan

Assume that the principal of a loan is EUR 5 million, the duration of the loan is one year, the credit rating of the borrower is B and the quality of the collateral it can offer is normal. According to the Commission Communication on reference rates, the risk margin that should be added to the base rate is 4%. If the base rate defined by the Commission is 3.5%, it follows that the derived market rate of interest is 7.5%.

If a public authority grants this loan at a rate of interest of 2%, the GGE of the aid is:

$$(7.5\% - 2\%) \times \text{EUR 5 million} = \text{EUR 275,000}.$$

3.6.2 Guarantees

State guarantees are often provided to undertakings, especially SMEs, to enable them to obtain a commercial loan. This is because if the loan is backed by a State guarantee it becomes less risky for the lender, and therefore, the lender is willing to provide the loan at a lower rate of interest. A lower rate of interest reduces the cost of financing for the borrower. Therefore, the beneficiary is normally the borrower.²⁰

When a public authority offers a guarantee, it assumes liability that burdens its budget. Even if the guarantee is not called, the liability is incurred. This liability implies that there is a risk of a future payment out of the State budget. Market operators do assume risks, but, a prudent operator would also charge a fee – a premium – to compensate for the risk. Similarly, in order for the guarantee not to lead to a transfer of State resources conferring

¹⁶ The Communication can be accessed at:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC0119%2801%29>

¹⁷ It can be accessed at:

https://competition-policy.ec.europa.eu/state-aid/legislation/reference-discount-rates-and-recovery-interest-rates_en

¹⁸ A basis point is 1/100 of a percentage point.

¹⁹ See, for example, Commission Decision SA.38674 on subordinated loans for SMEs in Germany.

²⁰ See the judgment in case C-275/10, *Residex Capital*, EU:C:2011:814, paragraphs 39-42.

an advantage to the undertaking that is covered by the guarantee, the liability must be remunerated.

Article 5(2)(c) of the GBER stipulates that the GGE of aid in a guarantee must be calculated using the “safe-harbour rates” of premium defined in the 2008 Commission Notice on State aid in guarantees.²¹ Safe-harbour rates are considered to correspond to market rates of premium. The Notice also lays down four cumulative conditions for a State guarantee to be free of State aid. Any deviation from those conditions may confer an advantage to the undertaking that is covered by the guarantee.

1. The borrower is financially viable: The borrower must not be in financial difficulty.
2. The guarantee covers a specific event: The guarantee must be linked to a specific financial transaction for a maximum amount and a limited time period.
3. No moral hazard: The guarantee must not cover more than 80% of the outstanding loan or financial obligation.
4. Market price: The premium that is charged for the guarantee must be equal to or exceed the expected loss.

The rates of premium defined in the Commission Notice vary from 0.4% of the guaranteed amount for SMEs with ‘AAA’ rating to 6.3% for SMEs with ‘B’ rating. No rates are defined for SMEs with credit rating of ‘CCC’ or lower.

Therefore, the GGE of State aid in a State guarantee is:

$$\text{GGE} = (\text{the rate of premium in the Commission Notice} - \text{actual rate of premium}) \times (\text{guaranteed amount})$$

The annual GGE has to be calculated for every year that the guarantee applies and discounted to the date on which it is granted to derive the total amount of aid that has to remain below the maximum allowable threshold defined by the GBER.

Box 8: Calculation of the GGE of aid in a guarantee

Let's assume an SME borrows EUR 1 million for a year, and a State guarantee backs the loan. The credit rating of the company is ‘B+’. According to the Commission Notice, the derived market premium is 3.8%.

The maximum possible guaranteed amount is 80% of EUR 1 million or EUR 800,000. The State guarantee is provided at a premium of 0.5%. Therefore, the GGE of the aid that is embedded in the State guarantee is:

$$(3.8\% - 0.5\%) \times \text{EUR } 800,000 = \text{EUR } 26,400.$$

3.6.3 Support of training

GBER allows State aid for the support of training. The standard aid intensity is 50% of the eligible costs. This rate may be increased up to a maximum of 70% for certain beneficiaries, such as small enterprises. The eligible costs are the costs of the trainer and the costs incurred by the undertaking whose employees are trained.

Therefore, the maximum allowable GGE of training aid is:

$$\text{GGE} = (\text{eligible costs}) \times 0.7$$

It is also important to note that State aid may only be provided to the undertaking that pays for the training of its personnel. If the State aid is granted to the undertaking that provides

²¹ The Commission Notice can be accessed at:
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC0620%2802%29>

the training (i.e. the trainer), then it becomes operating aid which cannot be exempted on the basis of the GBER. This is because the trainer is not investing in the acquisition of new skills or doing something out of the ordinary. The trainers carries out its normal tasks and is reimbursed for its day-to-day expenses.

If, for reasons of efficiency and/or effectiveness, the granting authority wants to reimburse only one trainer or the best trainer, then it must organise a public procurement procedure to select the cheapest/best trainer (i.e. the trainer that submits the most economically advantageous offer). In this case, a competitive selection procedure eliminates the advantage for the trainer in the meaning of Article 107(1) TFEU. The selection procedure must be open, transparent and non-discriminatory and the selection criterion must be the lowest price or the most economically advantageous offer. In this case, the aid flows through the trainer (who is paid by the State) to the employers of the trainees. So, a competitive selection procedure for trainers cannot eliminate the aid for the employers of the trainees.

The GGE of the State aid is the amount paid by the State to the trainer (which is considered to be equivalent to the value of the services at market rates because the trainer has been selected competitively) minus any symbolic or partial payment the trainees have to make. More specifically, the amount of State aid per participant can be calculated as follows:

$$\text{GGE (of State aid received by the employers of trainees)} = \left\{ \left[\frac{\text{total fee paid by the State to the trainer}}{\text{total number of man-hours of training}} \right] \times (\text{hours of training received by each participant}) \right\} - (\text{any fee paid by each participant})$$

Please note that public support of training for the acquisition of skills does not always involve State aid. For example, a public authority may implement a system of vouchers or credits which are made available to individuals to be exchanged for evening or weekend classes. The individuals then attend the courses of trainers or training institutions of their choice. In this case, the direct beneficiaries are not undertakings, and the trainers are not indirect beneficiaries if the measure does not restrict the training programme chosen by individuals. While, for employers, the measure is of general application, if it has no sectoral limitations.

3.7 Good practices

The GBER, being a regulation, is binding on Member States in its entirety. Public authorities must comply with all of the relevant provisions when they design their State aid measures, approve State aid applications, and verify the proper use of the aid by the recipients. Therefore, the correct application of the GBER can be divided into these three stages.

3.7.1 Design of State aid measures

Each aid measure has to conform with the relevant specific provisions. Yet, it is sometimes forgotten that certain general provisions must also be complied with, even if they do not seem to be relevant to the measure at hand. For example, the GBER excludes State aid to primary agricultural production. Thus, if a public authority intends to use the GBER to support, for example, the employment of persons with disabilities, it still has to specify that its measure does not apply to agricultural undertakings, even though, they are not likely to employ persons with disabilities. Similarly, undertakings in difficulty or undertakings that have not fully repaid incompatible State aid must be excluded.

3.7.2 Approval of aid applications

Granting authorities remain responsible for confirming that the information submitted by aid applicants is correct.²²

²² C-349/17, *Eesti Pagar*, EU:C:2019:172, paragraph 93.

Several European Court of Auditors reports have identified irregularities involving State aid.²³ The typical errors committed by public authorities are

- Granting aid beyond the maximum allowable thresholds;
- Funding ineligible costs; or
- Providing aid although the project had already started *before* the beneficiary formally applied for the aid.

All these errors make State aid incompatible with the GBER and therefore automatically illegal.²⁴ Costs and the date on which they are incurred must be verified with documentary evidence. Such documentary evidence (as the dates of invoices or the dates of orders of equipment or machinery) may also be used to confirm that the application for aid predates the start of work or the launch of a project.

The eligibility of aid applicants must also be verified before the aid is granted in order to confirm, for example, that they are not in financial difficulty, that they are SMEs or that they are located in an assisted region, if they claim the permissible SME or additional regional aid. However, if after receiving aid, they encounter financial difficulties or are acquired by a large enterprise, they may keep the aid, provided that those outcomes were not foreseen at the moment the aid was granted.²⁵

3.7.3 *Ex post* checks

The responsibility of granting authorities does not end the moment they confirm that the aid application complies with the requirements of the GBER. In addition, granting authorities have to ensure that the aid is actually used for the purpose for which it is approved. Some of the provisions of the GBER entail *ex post* checks. For example, jobs created by SMEs must be maintained for a minimum of three years.

Also, it should not be forgotten that records must be kept for ten years, and annual reports have to be submitted to the Commission.

3.7.4 Other issues

Non-economic activities

EU competition rules, in general, and the GBER, in particular, do not apply to public funding of non-economic activities. In practice, the actions and programmes that the GBER covers are economic in nature (i.e. they concern the offer of goods and services on the market for remuneration). However, a public authority may provide funding, for example, for the re-training of unemployed persons. Individuals do not qualify as undertakings, especially given that, in this case, they are unemployed. The granting authority also has to ensure that there is no indirect aid to trainers who provide services for remuneration and, therefore, are undertakings. Normally this can be excluded through the granting of vouchers to trainees, who can then use them at a training facility of their choice. Alternatively, any indirect aid to trainers can be avoided if they are selected through a competitive procedure that is open, transparent and non-discriminatory.

SME status

The GBER allows higher aid intensities for SMEs. It follows that public authorities must confirm that aid applicants claiming the higher aid intensity are indeed SMEs in the meaning of Annex I of the GBER. For that, they must take into account the total number of staff and

²³ See, for example, the 2021 Annual Report on the implementation of the EU budget. It can be accessed at: https://www.eca.europa.eu/lists/ecadocuments/annualreports-2021/annualreports-2021_en.pdf

²⁴ C-349/17, *Eesti Pagar*, EU:C:2019:172, paragraph 87; T-745/17, *Kerkosand v European Commission*, EU:T:2020:400, paragraph 40.

²⁵ C-245/16, *Nerea*, EU:C:2017:521.

turnover or balance sheet. In addition, they must consider the total number of staff and turnover or balance sheet of “linked” enterprises, and a proportionate share of the staff and turnover or balance sheet of “partner” enterprises. Annex I defines the meaning of linked and partner enterprises.

In practice, granting authorities check the status of the aid applicant by requesting its two most recent annual financial reports. However, the General Court has held that checking the most recent annual financial reports is not enough. The SME status must be confirmed on the date the aid is granted.²⁶

Cumulation of State aid with EU funds

An undertaking may receive State aid and other forms of public support from various sources, possibly for the same project or even the same eligible costs. In such cases of ‘cumulation of aid’, all relevant State aid must be taken into account for the calculation of the permissible maximum aid amounts or aid intensities and notification thresholds. Article 8 of the GBER contains ‘cumulation rules’. It stipulates that only what qualifies as State aid must be taken into account for the purpose of conforming with the aid intensity thresholds and the thresholds for individual aid notification. In practice, granting authorities should not consider resources which are not controlled by the State. These resources are those contributed by private investors or those granted directly by an EU institution or an EU agency (e.g. funding for research granted directly by the Commission or the European Institute of Innovation and Technology or funds provided directly or through a private intermediary by the European Investment Bank or the European Investment Fund). However, compliance is still necessary with the regulations that apply to those EU funds. By contrast, any funds, regardless of their origin, that flow through a public authority or an entity that is controlled by the State must be considered as State resources.

Cumulation of State aid with de minimis aid

The GBER allows State aid to be combined with de minimis aid. However, two sets of thresholds are applicable whenever public funds subsidise the same eligible costs: 1) the maximum aid intensity permitted by the relevant specific provision of the GBER, and 2) the current limit of EUR 200,000 per undertaking per three-fiscal-year period laid down in Regulation 1407/2013. The lower threshold is binding. For example, a small undertaking that has not received de minimis aid and makes an investment of EUR 600,000 may receive State aid up to 20% of the investment cost, i.e. EUR 120,000, under Article 17 of the GBER. This amount can be made up of EUR 90,000 of State aid plus EUR 30,000 of de minimis aid. However, it may not receive EUR 120,000 and on top additional EUR 30,000 for the same eligible costs. Nonetheless, it may receive EUR 30,000 for other costs, such as operating costs, for which aid is only exceptionally allowed. That is, any undertaking may receive multiple awards of aid as long as the relevant aid intensities or ceilings are not exceeded.

Aid not fully compliant with the GBER

Mistakes happen. When a granting authority becomes aware that State aid that has already been granted does not conform fully with the GBER, it must recover it immediately. The aid must be recovered regardless of whether the mistake was caused by an error of its staff or the aid recipient. Moreover, the granting authority must recover the aid on its own initiative even if the Commission is not yet aware of the mistake and has not ordered recovery.²⁷ Interest must be added from the date the aid was granted.

²⁶ T-745/17, *Kerkosand v European Commission*, EU:T:2020:400, paragraph 94.

²⁷ C-349/17, *Eesti Pagar*, EU:C:2019:172, paragraph 92.

3.8 When notification to the Commission is necessary

State aid granted on the basis of the GBER is exempt from notification only if it fulfils *all* the relevant conditions, i.e. the common *and* the particular specific provisions. The GBER does not apply to certain sectors (e.g. primary agricultural production), certain undertakings (e.g. undertakings in difficulty), certain types of aid (e.g. rescue or restructuring aid or aid to remedy a serious economic disturbance) or amounts of aid that exceed the thresholds laid down in Article 4. In all such cases, aid must be notified to the Commission.

In addition, Member States must notify individual aid measures or schemes whose design parameters deviate from the provisions that are defined in Chapter III of the GBER. To see how different design parameters may necessitate notification, consider the following example of risk finance.

The left column of the table below shows some of the main provisions of Article 21, as will soon be revised. The right column indicates a different design parameter that would necessitate notification.

Table 1. Design parameters that require notification

Defined by Article 21	Different parameters necessitating notification
Eligible undertakings must be SMEs.	Risk finance may be provided to companies that employ fewer than 500 employees.
Eligible undertakings must be unlisted SMEs younger than 10 years since their registration.	Risk finance may also be provided to listed SMEs that invest in high-risk green or digital technologies or are younger than 12 years since their registration.
Risk finance measures must be implemented via a financial intermediary.	Risk finance measures in the form of loans may also be implemented directly by a public authority.
Replacement investment may not exceed 50% of invested funds.	Replacement investment may not exceed 70% of invested funds in SMEs that invest in high-risk green or digital technologies.
The total amount of risk finance may not exceed EUR 16.5 million per undertaking.	The total amount may not exceed EUR 20 million per undertaking in a region under Article 107(3)(a) TFEU.
The loss borne first by the public investor may not exceed 25% of the amount invested.	The public investor may bear first losses up to 30% of the amount invested in a region under Article 107(3)(a) TFEU or in certain state-of-the-art projects.
The minimum private participation may not be less than 10%, or 40% or 60% of the amount invested, depending on the age of the recipient SME.	The minimum private participation may be 50%, or 25% or 10% less than the corresponding thresholds defined by Article 21 for certain state-of-the-art projects.

4 Conclusions

This paper presents the objectives, structure and main provisions of the GBER that can be useful to support the social economy. The purpose of the GBER is to reduce the administrative burden of compliance with State aid requirements while protecting the integrity of the internal market by ensuring that aid measures across the EU are implemented on the basis of simple, exhaustive and uniform rules.

The GBER is now the primary instrument used by Member States to pursue their State aid policies. It relieves them from the obligation to notify their measures to the Commission, provided that they fully comply with the conditions of the GBER. Any aid measure that is not fully compliant is automatically illegal.

The GBER enables Member States to support the social economy, by defining how State aid may be legally provided to incentivise investment by SMEs or into SMEs and start-ups, to support training, and to encourage the employment of persons with disabilities or from disadvantaged backgrounds.

At the time of writing, the GBER was in the process of being amended. New provisions were to be added, allowing for larger amounts of aid and for new types of activity and extending its validity to 31 December 2026.

This paper also identifies typical mistakes that can be easily avoided and presents good practices for the design of aid measures and the correct application of the GBER.

5 References

Regulation 651/2014 (GBER) was published in the Official Journal OJ L 187, 26/6/2014. It can be accessed at:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.187.01.0001.01.ENG

The consolidated (informal) version of the GBER can be accessed at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0651-20210801>

The forthcoming amendments of the GBER, C(2023) 1712 final, 9/3/2023 can be accessed at:

https://competition-policy.ec.europa.eu/system/files/2023-03/GBER_amendment_2023_EC_communication_annex_0.pdf

The Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union was published in the Official Journal OJ C 262, 19/7/2016. It can be accessed at:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.262.01.0001.01.ENG&toc=OJ:C:2016:262:TOC

The reference rate methodology is explained in the Commission Communication on the revision of the method for setting the reference and discount rates. It was published in the Official Journal, OJ C 14, 19/1/2008. It can be accessed at:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC0119%2801%29>

The latest base rate can be found at:

https://competition-policy.ec.europa.eu/state-aid/legislation/reference-discount-rates-and-recovery-interest-rates/reference-and-discount-rates_en

The 2008 Commission Notice on State aid in guarantees was published in the Official Journal OJ C 155, 20/6/2008. It can be accessed at:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC0620%2802%29>

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