REPUBLIC OF ESTONIA
MINISTRY OF FINANCE

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Directorate-General for Competition
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HT. 6365 Estonia's comments on the second draft of GBER

Dear Madam/Sir

Hereby we submit Estonia's opinion on the second draft of the General Block Exemption Regulation (hereinafter also referred to as *GBER)*.
Estonia in general supports the second draft of GBER and welcomes many of the changes made in the draft. Still, we find some provisions unclear and ask the Commission to clarify these issues in the future GBER. We also suggest some amendments to the text of the second draft.

1) Draft GBER and Communication on EU's eastern regions bordering Russia, Belarus and Ukraine: The European Commission has adopted a Communication on EU's eastern regions bordering Russia, Belarus and Ukraine, setting out a strategy to support economic and security conditions in these regions. As the needs of the EU Eastern border regions are addressed by the Commission in the draft amendments of the regional aid guidelines, we propose for the sake of clarity to reflect this fact in the draft GBER preamble.

   In addition and as reflected in the *non-paper on the need to include special provisions in GBER regarding the Eastern Regions Bordering Russia, Belarus and Ukraine* sent on 30 June 2026 by Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia**,** we would like to propose some measures which could be take into consideration by the Commission in the future GBER:

- increasing the intensity of aid in the EU eastern border regions by at least additional 15 percentage points,
- raising the notification thresholds,
- introducing the derogation from paragraphs 2, 3 and 4 of Article 8 in order to consider that aid in eastern border regions by default has an incentive effect,
- setting up conditions for the application of block exemptions for the development/ acquisition of dual-use goods, technologies and infrastructure.

2) <u>Article 1(5)(a) and (b)</u>:
In subparagraph (a) we suggest extending the period during which SMEs may benefit from the derogation of being in difficulty from 3 years to 5 years. The Commission has acknowledged that the business model of undertakings, in particular SMEs, in the early years may be based on heavy investment and rapid growth, which may result in them temporarily meeting the criterion for being in difficulty without actually being in financial distress. The 3-year derogation period is therefore not sufficient and extending it to 5 years would allow for better taking into account the real development cycles and capital needs of SMEs.
Furthermore, a 5-year period would be in line with other provisions of the draft, in particular Article 29, which defines an undertaking as a young undertaking for up to 5 years after its registration. Applying a 5-year period instead of a 3-year period would therefore ensure a more uniform and consistent application of GBER.

For subparagraph (b) it is not clear why the derogation to grant aid to innovative start-ups, which are considered in difficulty, applies for 5 years but not for 10 years. The definition of innovative start-up (Article 2(34)) applies to undertakings operating for less than 10 years and we suggest to extend the period from 5 to 10 years for innovative start-ups during which the criterion for defining an undertaking in difficulty, is not applied.
The business model of innovative start-ups differs significantly from that of traditional undertakings. The activities of such undertakings are often based on long-term research and development, technology validation and preparation for market entry, during which undertakings can operate for years without generating positive cash flow or profit. This is particularly characteristic of undertakings in deep tech, biotechnology, the defence industry, clean technologies and other knowledge-intensive sectors, where development cycles are long and capital requirements are significant.
The 5-year exemption no longer corresponds to the actual development cycle of many innovative undertakings. In practice, many innovative undertakings only reach the phase where the technologies or products being developed start to generate sales revenue after the 5th year of operation. Therefore, an undertaking may be formally in difficulty on the basis of its balance sheet, even though it continues to have strong growth potential, investor support and the ability to continue its activities. In the case of innovative star-ups, accumulated losses are often not an indicator of financial difficulties but a natural consequence of the extensive investments made in research and development. Treating such undertakings as undertakings in difficulty solely on the basis of a reduction in capital may unduly restrict their access to State aid measures at the very time when public support can have the greatest impact on the market uptake of innovation.
Extending the period to 10 years would better take into account the specificities of innovative undertakings, support the innovation and competitiveness objectives of the European Union and reduce situations where economically viable undertakings with long development cycles remain not eligible for aid solely on the basis of formal balance sheet indicators.
Furthermore, as mentioned above, a 10-year period would be in line with other provisions of the draft GBER, in particular Article 2(34) which defines an innovative start-up and specifies it as an age of 10 years. The amendment would therefore help ensure a more uniform and consistent application of GBER.

3) <u>Article 2(38):</u> We suggest clarifying the text of Article 2(38) (Start of works) to make it unequivocally clear that the 2% estimate is to be provided at the time of the application for aid.

4) Food security, Article 15(3) and Article 41: Estonia has proposed for the I draft GBER to include in the draft GBER additional opportunities to support investments aimed at increasing the resilience and crisis preparedness of the food industry.

Hereby we propose to amend the requirement in Article 15(3) which stipulates that aid to large enterprises in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty (c-areas) may only be granted for an initial investment creating a new economic activity. We propose to amend the provision so that in c-areas for activities C.10 and C.11 of the NACE classification, it would be possible to grant aid to large enterprises for all kind of initial investments (i.e. not only for initial investment creating new economic activities). The current requirement excludes large food industry companies from access to regional aid, which could have a negative impact on the security of food supply, especially in Eastern border regions.

We also propose to amend Article 41 so that it can also be used to support large enterprises with activity code NACE C.10 or C.11. Article 41 supports digitalisation, which plays an important role in ensuring food security.

5) Article 4: The wording of the Article has been changed but the purpose of the Article remains unclear. We would also like the Commission to clarify why the title speaks about the aid provided **via** financial intermediaries, but the first paragraph speaks about the compatibility of aid **to** the financial intermediaries. At the same time, according to the second paragraph, this Article does not apply if the aid is fully passed **to** the final beneficiaries.

In addition, we suggest amending Article 4(3) after the first sentence as follows "*The eligible costs set out in the relevant article may be determined ex ante on the basis of a reliable business plan, project budget and other appropriate documentation, and shall not be subject to ex post verification of the actual costs incurred*."
Alternatively, it should be explained in the future Guidance document how to verify eligible costs for financial instruments.
Article 4 should clarify how the aid grantor must verify the eligible costs of the relevant article in the case of financial instruments. For example, when granting a loan, the business plan of the aid applicant is validated before granting the loan and it is verified that it meets the conditions set out in the relevant article of GBER. After granting the loan, however, the costs incurred are no longer verified, but only the general compliance with the terms of the loan agreement (mainly adherence to the loan schedule). It would be necessary to ensure that such a logic of operation is in line with the conditions of GBER.

6) Article 8(5): in the II draft the exemption from the incentive effect obligation no longer applies to investment and operating aid for the production of renewable energy (Articles 58, 59, 60) and cultural investment aid (Article 69).

We strongly oppose the proposed amendment that would remove the exemption for cultural investment aid (Article 69) and urge the Commission to retain the exemption as it is provided for in the current GBER and was in the I Draft.

In our opinion the application of the incentive effect requirement to investment aid for culture is not justified. It is not only a question of the specific nature of the cultural sector, but also whether the submission of an application before the start of a project is an appropriate and necessary means of establishing the actual incentive effect of such aid. In the case of investments for the preservation of cultural and cultural heritage, the investment need is often related to the preservation of the object, access to a public cultural service or other public interest and the purpose of the support is not necessarily to change the economic investment decision of the beneficiary. Therefore, the normal incentive effect requirement will be disproportionate for such aid and would lead to formal restrictions without providing significant additional protection against distortions of competition.

We would also like the Commission to clarify why investment and operating aid for the production of renewable energy (Articles 58, 59, 60) has been removed from Article 8(5)? The current GBER (Article 6(5)(o)) as well as the I draft of the new GBER contained this possibility. We ask for the Commission to explain the reasoning behind the amendment and how it supports the overall goal to develop the production of emission free power and electrification in general.

However, the Commission has expanded the exceptions under paragraph 5 to aid for sports infrastructure (pursuant to Article 77) or operating aid to airports (pursuant to Article 79). We consider these amendments positive and simplifying the granting of aid.

7) Article 18: We propose to review the amended wording of Article 18 as the current wording is not clear. It could be assumed that the first paragraph provides possibility to grant limited amounts of aid (Article 20a of the current GBER) and the second paragraph 2 regulates state aid to be granted on the basis of the eligible costs (Article 20 of the current GBER) but the first paragraph can be interpreted as a general maximum aid intensity for all cases.

8) Article 40 and Article 8(5)(h): We consider that Article 40 is confusing as it is not possible to grant aid under this Article (e.g. in the list of primary objectives of Part II of Annex II there is no Article 40). In Article 8(5)(h) Article 40 is only mentioned in conjunction of aid granted under Article 41 ("*innovation aid for SMEs and small midcaps under Article 41 passed on by an intermediary in line with Article 40").* If the conditions stipulated under Article 40 are related only to Article 41 these conditions should be part of Article 41 (not as a separate Article).

9) Article 72(7): Estonia proposes to amend Article 72(7) exempting mobile networks to be set up in eastern border areas from the obligation to provide wholesale access to active services. In order to ensure competition, an open and non-discriminatory wholesale access obligation for all passive infrastructure (towers, tower-supporting infrastructure) must be maintained in these areas.

   Providing access to active services requires substantial investment by operators to change the network architecture and create technical interfaces. In sparsely populated border regions (market failure), these costs make the project economically unviable for the project operator, which may miss the target set.

   Estonia is planning to invest in new communication towers to transfer the national operational radio communications (ORS2) to the service layer of commercial networks. Regulatory pressure by providing active services discourages operators from participating in projects of national importance.

   In line with the Commission Communication on the Eastern Borders, there is a need for flexibility in border regions. Preferential development of passive infrastructure enables "dual-use" solutions: the same mast is used both for routine data communication and for hosting security applications (e.g. *drone shield,* border surveillance sensors).

10) Article 72: we propose to provide in the Article, that State aid is allowed to *increase* the resilience of existing and new mobile infrastructure. This must include investments in autonomous power supplies (generators) without triggering the mandatory tripling of network capacity as stipulated in Article 72(5).

   The amendment is important to strike the critical deficiencies in the continuity of the communication infrastructure, where the interruption of data communication paralyses emergency aid and threat communication. The masts depend on the central power grid and lack sufficient autonomous power in case of long-term interruptions. Estonia is planning investments to equip multi-operator shared masts with generators to ensure that communication is maintained in crisis situations, that is to maintain a vital service, not conventional market development.

11) Article 73: we ask the Commission to amend Article 73(6)(d) (undersea cables) by making eligible investments in improving the security of undersea cables, such as physical security of disembarkation points and the establishment of cable monitoring systems (e.g. AIS and DAS).

    European Commission Recommendation (EU) 2024/762 (21 February 2024) on the security and resilience of underwater cable infrastructure underlines the need to improve Member States' monitoring capacities and to set up 'monitoring centres' to ensure situational awareness. The amendment of GBER is necessary to align state aid rules with the EU's strategic interests in the protection of critical infrastructure, especially in the countries of the eastern border and the Baltic Sea, where repeated cases of cable damage have occurred in recent years. International submarine cable infrastructure and its disembarkation points are strategic objects of heightened vulnerability, against which malign activity directly threatens the security of Member States, especially digitally advanced countries. Current sensor and monitoring capabilities on the seabed infrastructure are deficient. We plan to increase the sensor and monitoring capabilities of submarine cables to detect malicious activity in real time. The monitoring information collected is essential for the relevant national authorities (including security and maritime surveillance units) to ensure a rapid response and physical protection of national data links.

12) Article 85: it is not clear how the transitional provisions should be implemented in practice. We ask the Commission to clarify if Member States must submit new information sheets indicating new duration of the schemes.
    E.g. if the duration of a measure in an already submitted GBER information sheet has been indicated as "until 31 December 2026", but the measure is planned to be implemented for a longer period in accordance with paragraphs 2, 3 or 4 (e.g. until 31 December 2027), should a new information sheet indicating the revised duration be submitted before the end of 2026?
    The same question arises in regard of Article 58(4) of the current GBER according to which "At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of 6 months." Do we have to submit new GBER information sheets in case the duration of the measure in the already submitted GBER information sheet has been indicated "until 31 December 2026".

Comments already made regarding I draft and not taken into account in II draft of GBER:

1) Separate article for supporting the defence industry: we suggest to include an article on aid for the production of defence-related products and services. Such an article has not been included in the II draft GBER and Estonia is re-suggesting the same.

2) Article 1(5): suggestion to make an exception to the prohibition on supporting undertakings in difficulty in the case of small amounts of research and development aid by amending Article 1(5). Article 32(7)(a) allows to increase the aid intensity for small-scale R&D

projects (for aid amount up to EUR 1.58 million, or, as from 1.01.2031, EUR 1,7 million per undertaking, per project) by 20% for all undertakings, regardless of their size. This allows for the design of simpler measures with a lower administrative burden, as determining the size of an undertaking is a very resource intensive activity. However, even for small amounts of R&D aid, there is an obligation to verify whether the undertaking is in difficulty, which means that the size of the undertaking still has to be determined in advance. We propose to supplement Article 1(5) of the draft GBER so that it also reflects the exception for small amounts of R&D aid by adding a new subparagraph as follows: **"***aid for research and development projects covered by Article 32, where the total aid amount does note exceeds EUR 1.58 million or, as from 1 January 2031, EUR 1,7 million, per undertaking, per project***."**.

3) Article 28: We propose to remove from Article 28(1) the reference to Article 25(3), which sets out the requirements that the eligible SME must have been in operation for either less than 10 years following its first registration or less than 7 years following its first commercial sale and that the investment in the new economic activity must exceed 30% of the average annual turnover of the preceding five years. The purpose of these conditions remains unclear, given that aid under Article 28 is primarily granted in the form of guarantees for repayable loans. Introducing such requirements will increase bureaucracy rather than help to reduce it.

4) Article 70. We propose to define difficult audiovisual works more precisely in the draft. The wording in the draft has not been changed compared to the current regulation, but we believe that the corresponding definition should be written in a more clear and concrete manner.

5) Article 79. Estonia is of the opinion that the conditions on granting aid set out in Article 79 (Aid to airports) of the draft GBER should allow for greater flexibility in granting state aid to airports and airlines in the peripheral Member States of the European Union, where air connections play an important role in European integration and improving competitiveness, especially given the current situation in Eastern Europe. We consider it important to have sufficient flexibility that considers the security and geopolitical aspects of the Eastern European Member States, including additional obligations related to aviation safety and security, such as responding to GNSS interference or detecting and repelling unmanned aircraft.

Technical comments (includes comments submitted for the I draft of GBER):

1) Article 1: There is no list of categories to which GBER shall apply (as it is in Article 1(1) of the current GBER. This means that there is no easy overview of which categories of aid the GBER applies to, please add such list.
2) Article 1(5) (b): please note that there are two different time periods in this provision, in both cases reference should be made to five years. This comment is without prejudice to our suggestion to extend the period of start-ups in Article 1(5)(b) to 10 years (please see our comment above).
3) Article 2: The definitions of terms are arranged according to the order in which they appear in the chapters and sections of GBER. This is also the case in current GBER, but in current GBER it is explained which aid category (objective) the terms fall under (e.g. Definitions for regional aid), but in the draft only the sections and chapters of the GBER are referred

to (e.g. Definitions of terms that first appear in Section 1 of Chapter III) – it is no longer immediately clear which category of aid the definition of term applies to. We propose also adding categories of aid.

4) Article 2, point 87: the definition of "social enterprise" should be sufficiently clear and flexible for Member States not unduly excluding organisations that generate significant social impacts, such as some providers of food aid, social inclusion or community-based services. It is not clear whether current definition covers these organisations.
5) Article 2, point 117: "small mid-cap" in case of implementation of the InvestEU programme – please clarify whether only the number of employees ("employs up to 499 workers") counts and whether turnover and balance sheet size (as in Annex IV in general) do not need to be taken into account.
6) Article 3(2)(b) (relevant entity is undertaking): it is not clear how, in such a case, aid granted to one undertaking, but to different entities under different articles should be taken into account (cumulation).
7) Article 7(2) (simplified cost option): it is not clear whether simplified cost option can be applied also in case the aid measure is entirely funded from state budget (i.e. neither partly nor fully from Union funds). We ask the Commission to clarify this issue preferably in Article 7(2) or in recital 20 of the draft.
8) Article 9 (3): in the numeration of the subparagraphs letters "a)" and "b)" are recurring.
9) Article 11(1)(c), 12(1) and 13(1): in these provisions it is referred to Article 18(3) but the third paragraph of Article 18 is deleted from the II draft of GBER.
10) Article 11(1), last paragraph and Art 12(2): reference is made to Article 18(2), but it should be made to Article 18(1).
11) Article 15(11): the last sentence of paragraph 11 is not entirely understandable and we ask the Commission to clarify if the last sentence only concerns "outermost regions".
12) Article 25(8)(d) of the draft GBER uses the term "cash amount", which is not defined. We ask the Commission to clarify what is meant by "cash amount" or whether the term should be "nominal amount".
13) Article 29(3): In our opinion, there is a wording error in this article. The title of the article mentions both young entrepreneurs and innovative start-ups, but the conditions for granting aid are set out only for young entrepreneurs (Article 29(3)). The provision should be amended as follows (the addition is marked in bold): "Aid granted under this article to young enterprises and innovative start-ups shall take the following forms and comply with the following conditions:"
14) Article 35(6): We request further clarification on the practical implication of Article 35(6) of the draft. The current Regulation (Article 25c) stipulates that Horizon Europe funding shall cover at least 30% of the total eligible costs of the action. The draft provides that Horizon Europe Programme shall cover "part" of the costs of a co-financed research and development project/study/infrastructure. It is not clear from the wording how this condition should be applied in the case of international cooperation projects where the so-called *virtual common pot* financing model is used and each state finances the activities of its partners. Please specify whether Article 35(6) can be applied in a situation where Horizon Europe finances at least one project of the activities of consortium partner or whether Horizon Europe must specifically cover the costs of the partner to whom the Member State wishes to grant aid under Article 35. Clarification is important to ensure a uniform interpretation of the provision in the implementation of the European Partnership Programmes and other international R&D cooperation activities.

15) New Article 37a: We suggest clarifying (e.g. in the future Guidance document) which concrete programmes are meant under "the Union Programme" and "Union Programme rules" referred to in this Article.
16) Chapter III: it is not clear under which articles aid can be granted only to "aid schemes" and when also as "individual aid" – this should be explained somewhere in the draft (e.g. in Article 1). E.g. in Articles 16, 27, 28, 29, 61, 62, 62a etc aid can be granted to "aid scheme", but in Article 15 to "aid measures" – does "aid measure" mean here "aid scheme"?
17) Article 45(1): in Article 32 of the current GBER it is referred to "aid scheme", in Article 45(1) of the draft it has been replaced by "aid" - does this mean that individual aid can also be provided under Article 45 of the draft?
18) Article 65(7): for the sake of clarity, the text "Investments related to technologies constituting an already profitable established commercial practice throughout the Union without the aid" has to be explained. This is a vague condition that increases the administrative burden, as there is no clarity on what exactly "throughout the Union" means, as well as how to define the concept of "already profitable established commercial practice". The terms of GBER must be unambiguous and the cited text is also not in line with the principle of simplification.
19) Article 69(3)(a): we propose to add also "press" ("except for press and magazines that are exclusively cultural"), because it is not clear why cultural magazines are preferred but cultural newspapers are left out. A new Article (Article 20a) has been added to the II draft which allows to grant aid in the frames of aid schemes for SMEs for the production and dissemination of press publications. We ask the Commission to clarify if "exclusively cultural press" production is eligible under this Article.
20) Article 78(3): clarification is needed on whether aid for local infrastructure can be granted for sports infrastructure and cultural infrastructure. Or is such infrastructure always regarded as "dedicated infrastructure" (which is not eligible anyway)?
21) Article 84: for the sake of clarity, please specify which specific funds are meant under "Union funds implemented under shared management for the remainder of the 2021- 2027 programming period" (e.g. ERDF, Social Fund, JTF). We also ask for clarification as to whether it is not necessary to submit new block exemption notifications in this case (in case the duration of the existing structural funds measures is stated in the existing block exemption notification as 31.12.2026)? We also need clarification as to whether the RRF measures can or cannot continue to be implemented under the current GBER.
22) ANNEX III, size of enterprise (SME/ large enterprise): please consider whether "small mid-cap" should also be added.
23) Future Guidance document:
    a. We ask to clarify in the guidance document the distinction between economic and non-economic activities of research and development institutions or research infrastructure.
    b. Please explain and provide examples of the "simplified funding gap" provision in Article 2, point 48 of the draft GBER.
    c. Please clarify the practical implementation of Article 40 of the draft GBER.
    d. According to Article 69(3)(b) of the draft, the provision on cultural aid does not apply to infrastructure used for cultural purposes for less than 80 per cent of the time or area per year. In contrast to the current rules, the draft threshold is assessed on 'average" over the period referred to in Article 3(2)(a). We support, in principle, taking into account the average use as this will allow us to better consider the seasonality of cultural infrastructure activities and changes in use. At the same time, it is necessary to clarify in the Guidance Document how to meet the requirement in practice. In particular, to clarify whether the 80 % requirement is to be assessed as a single average for the whole

period referred to in Article 3(2)(a), or whether the requirement is also to be assessed on an annual basis and how periods of partial or total unavailability of cultural infrastructure due to repair or reconstruction are to be taken into account.

e. Please clarify the practical implementation of Article 77 - how the average utilisation rate is to be calculated and demonstrated in practice. In particular, how the requirement applies to sport infrastructure with seasonal use and how the periods during which the infrastructure is partially or fully decommissioned due to repair or reconstruction should be taken into account. We also ask to specify how the simultaneous use of different users is to be taken into account, for which the Draft provides for the calculation of the respective parts of the time.

f. Please note that the Guidance should be available to Member States as soon as possible, ideally by 1 January 2027.

Yours sincerely,

(signed digitally)
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