

SA. 107952.MX - Annex to the information request

In the table below, you will find a list of compatibility conditions and provisions that may be relevant for the assessment of the legal basis concerning the block-exempted aid measure under monitoring (Commission Regulation (EU) No 651/2014, OJ L 187, 26.6.2014, p. 1, as amended).

Please provide information, in short form, in the column "Where to find them in legal basis or secondary law?" by a reference to the relevant paragraph and page number of the legal document, e.g. Art. 1, p. 3, Legal text; Paragraph 3, p. 5, Secondary law).

If a condition or provision is implicitly fulfilled i.e. it is not especially contained in the legal text of the aid measure, please give a short explanation where it is established.

Where a condition is not applicable, please put "N/A" and give a short explanation.

Annex regarding the legal basis

A. Common provisions of application

GENERAL COMPATIBILITY CONDITIONS	COMPLIANCE CHECK (OK?)
Article 1	
Article 1 – Exclusion of certain activities and aids above a certain amount (§2)	
The GBER shall not apply to: • R&D&I aid schemes with average annual State aid budget exceeding EUR 150 million from six months after their entry into force this Regulation may continue to apply for a longer period to any of these aid schemes after having assessed the relevant evaluation plan notified by the Member State to the Commission, within 20 working days from the scheme's entry into force. Where the Commission has already extended the application of this Regulation beyond the initial six months as regards such schemes, Member States may decide to extend those schemes until the end of the period of application of GBER, provided that the Member State concerned has submitted an evaluation report in line with the evaluation plan approved by the Commission. • any alterations of schemes referred above other than modifications which cannot affect the compatibility of the aid scheme under GBER or cannot significantly affect the content of the approved evaluation plan • aid to export related activities • aid contingent upon use of domestic over imported goods	
Article 1 – Exclusion of certain sectors (§3)	
The GBER shall not apply to:	

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• The processing and marketing of agricultural products* where the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or where the aid is conditional on being partly or entirely passed on to primary producers; • Aid to facilitate the closure of uncompetitive coal mines (Council decision 2010/787/EU); <i>* If an undertaking active also in sectors within the scope of GBER, the Regulation applies to aid granted in respect of these sectors provided that Member State ensures that the activities in the excluded sectors do not benefit from the aid.</i>	
Article 1 – Exclusion of companies concerned by the Deggendorf rule (§4)	
The GBER shall not apply to: (a) aid schemes which do not explicitly exclude the payment of individual aid; (b) ad hoc aid granted by the Member State in favour of an undertaking which is subject to outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the internal market.	
Article 1 – Exclusion of companies in difficulty (§4)	
The GBER shall not apply to undertakings in difficulty • by derogation: this Regulation applies to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty during the period from 1 January 2020 to 31 December 2021.	
Article 1 – Exclusion of aid measures violating Union Law (§5)	
The GBER shall not apply to State aid measures, which entail, by themselves, by the conditions attached to them, or by their financing method, a non-severable violation of Union law, in particular: (a) aid measure where the grant of aid is subject to the obligation for the beneficiary to have its headquarters or to be predominantly established in the relevant Member State. Requirement for an establishment or branch in the aid granting Member State at the moment of payment of the aid is allowed. (b) aid measure where the grant of aid is subject to the obligation to use nationally produced goods or national services; (c) aid measures restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.	
Article 4 – Individual notification thresholds	
The GBER shall not apply to aid which exceeds: • Research and development:	

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i. if the project is predominantly fundamental research: EUR 40 million per undertaking, per project; where more than half of the eligible costs of the project incurred through activities within the category of fundamental research; ii. If the project is predominantly industrial research: EUR 20 million per undertaking, per project; where more than half of the eligible costs of the project incurred through activities within the category of industrial research or industrial research and fundamental research taken together; iii. if the project is predominantly experimental development: EUR 15 million per undertaking, per project; where more than half of the eligible costs of the project incurred through activities within experimental development; iv. if the Eureka project or project implemented by a Joint Undertaking (Article 185 or Article 187 TFEU), the amounts referred to in points (i) to (iii) are doubled. v. if the aid for research and development projects is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of a reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the time of grant, the amounts referred to in points (i) to (iv) are increased by 50 %; vi. aid for feasibility studies in preparation for research activities: EUR 7,5 million per study; vii. for aid for SMEs for research and development projects awarded a Seal of Excellence quality label and implemented under Article 25a, the amount referred to in Article 25a (2,5 million per SME per research and development project or feasibility study); viii. for aid Marie Skłodowska-Curie actions and ERC Proof of Concept actions implemented under Article 25b the amounts referred to in Horizon 2020 or Horizon Europe programme rules); ix. for aid involved in co-funded research and development projects implemented under Article 25c, the amounts referred to in Horizon 2020 or Horizon Europe programme rules; x. for aid for Teaming actions implemented under Article 25d, the amounts referred to in Horizon 2020 or Horizon Europe programme rules; • for investment aid for research infrastructures: EUR 20 million per infrastructure; for aid for innovation clusters: EUR 7,5 million per cluster; • innovation aid for SMEs: EUR 5 million per undertaking, per project; • for aid for process and organisational innovation: EUR 7,5 million per undertaking, per project.	
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The thresholds shall not be circumvented by artificially splitting up the aid schemes or aid projects.	
Article 5 – Transparency of aid	
Only transparent aid (aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid <i>ex ante</i> without any need to undertake a risk assessment) shall be exempted. The following are considered to be transparent: • aid comprised in grants and interest rate subsidies • aid comprised in loans (where gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant) • aid comprised in guarantees: where the gross grant equivalent has been calculated on the safe-harbour premiums laid down in a Commission Notice or the methodology to calculate the gross grant equivalent has been accepted by the Commission following a notification before the implementation on the basis of the Commission Notice on Guarantees and the approved calculation methodology explicitly addresses the type of the guarantee and the type of the underlying transaction at stake in the context of the application of the GBER • aid for tax advantages (where measure provides for a cap to ensure that threshold is not exceeded) • aid in the form of repayable advances, if the total nominal amount of the repayable advance does not exceed the thresholds applicable under GBER or if, before implementation of the measure, the methodology to calculate the gross grant equivalent of the repayable advance has been accepted following its notification to the Commission. • aid in the form of the sale or lease of tangible assets below market rates where the value is established by an independent expert evaluation prior to the transaction or by reference to a publicly available, regularly updated and generally accepted benchmark	
Article 6 – Incentive effect	
Aid can only be exempted if it has an incentive effect: • The beneficiary submitted written application for aid to Member State, before work on the project or activity starts, with at least the following information: - undertaking's name and size; - description of the project, including its start and end dates; - location of the project; - list of project costs;	

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- type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and amount of public funding needed for the project • Ad hoc aid to large enterprises; in addition to the above, the Member State has verified before granting the aid that the beneficiary provided documentation establishes one or more of the following: - a material increase in the scope of the project/activity due to the aid, or - a material increase in the total amount spent by the beneficiary on the project/activity due to the aid, or - a material increase in the speed of completion of the project/activity concerned; → Exceptions: • Tax advantages if: - the measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and - the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax advantages. • The following categories of aid are not required to have or shall be deemed to have an incentive effect: - aid for research and development projects awarded a Seal of Excellence quality label, Marie Skłodowska-Curie actions and ERC Proof of Concept actions awarded a Seal of Excellence quality label, aid involved in co-funded projects and in co-funded Teaming actions, if the relevant conditions laid down in Article 25a, Article 25b, Article 25c or Article 25d are fulfilled.	
Article 7 – Eligible costs	
For the purposes of calculating the aid intensity • All figures shall be taken before any deduction of tax or other charge. The amounts of eligible costs may be calculated in accordance with the simplified cost options (Reg 1303/2013, or Reg 2021/1060) whichever is applicable provided that the operation is at least partly financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision; • Aid granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid. • Aid payable in the future, including aid payable in several instalments shall be discounted to its value when granting. Eligible costs shall also be discounted to their value at the time of granting the aid. The discounting interest rate shall be the one which was applicable at the time of granting the aid;	

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• Where aid is granted in the form of repayable advances which, in the absence of an accepted methodology calculating their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of successful outcome of the project, as defined on the basis of a reasonable and prudent hypothesis, the advances will be repaid with • an interest rate at least equal to the discount rate applicable at the moment the aid is granted, the maximum aid intensities may be increased by 10 percentage point. Eligible costs & documentation • Eligible costs must be supported by clear, specific, and contemporary documentary evidence. • The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Reg 1303/2013, provided that the operation is at least partially financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision.	
Article 8. Cumulation	
• Total amount of aid (for the aided activity or project or undertaking) shall be taken into account for thresholds and maximum aid intensities (§1); • If Union funding (not under the control of the Member State) is combined with State aid, only the latter shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law (§2); • GBER exempted aid may be cumulated with any other State aid as long as the measures concern different identifiable costs (§3a); • No cumulation of exempted aid with any other aid on the same eligible costs, partly or fully overlapping, if the result would exceed the highest aid intensity/amount applicable to this aid under GBER (§3b)¹;	

¹ Financing provided to the final beneficiaries with support from the InvestEU Fund covered by Section 16 of Chapter III and the cost covered by this financing shall not be considered for determining compliance with the cumulation provisions laid down in the first sentence of this point. Instead, the amount relevant for determining compliance with the cumulation provisions of the first sentence of this point shall be calculated as follows. First, the nominal amount of the financing supported by the InvestEU Fund shall be deducted from the total eligible project costs, obtaining the total remaining eligible costs; second, the maximum aid shall be calculated by applying the relevant highest aid intensity or aid amount only to the total remaining eligible costs.

In cases of Articles for which the notification threshold is expressed as a maximum aid amount, the nominal amount of financing provided to the final beneficiaries with the support from the InvestEU Fund shall also not be considered for determining whether the notification thresholds in Article 4 are respected.

Alternatively, for senior loans or guarantees on senior loans supported by the InvestEU Fund under Section 16 of Chapter III, the gross grant equivalent of the aid entailed in such loans or guarantees provided to the final beneficiaries may be calculated in accordance with Article 5(2), point (b) or (c), as appropriate. This gross grant

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• State aid exempted under the GBER shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of the GBER (§5).	
Article 9 – Publication and information	
• Publication on a comprehensive State aid website, at national or regional level of the following (§1): a. the summary information in the standardised format (see Article 11) or a link providing access to it; b. the full text of each aid measure (see Article 11) or a link providing access to the full text; c. the information (see annex III) on each individual aid award exceeding EUR 500 000 (see Annex III), for beneficiaries active in primary agricultural production (other than Section 2a) each individual aid award for such production exceeding EUR 60 000 and for beneficiaries active in the fishery and aquaculture sector (other than 2a) each individual aid award exceeding EUR 30 000. • For schemes in the form of tax advantages, the conditions set out in paragraph 1(c) of this Article shall be considered fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million (§2)): - 0,03-0,5 (only for fishery and aquaculture); - 0,06-0,5 (only for primary agricultural production); - 0,5-1; - 1-2; - 2-5; - 5-10; - 10-30; and - 30 and more. • The information referred to in paragraph 1(c) shall be organised and accessible in a standardised manner, (see Annex III), and shall allow for effective search and download functions. The information referred to in paragraph 1 shall be published within 6 months from the date the aid was granted, or for aid in the form of tax advantage, within 1 year from the date the tax declaration is due, and shall be available for at least 10 years from the date on which the aid was granted (§4). • Member States shall comply with the provisions of this Article at the latest within two years after the entry into force of GBER (§6).	

equivalent of the aid can be used for ensuring, in line with the first sentence of this point, that cumulation with any other aid for the same identifiable eligible costs does not result in exceeding the highest aid intensity or aid amount applicable to the aid under this Regulation or the relevant notification threshold under this Regulation.

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Article 11 – Reporting (info sheets)	
• The following has to be sent by Member States to the Commission: (§1): a. Summary information in the standardised formal laid down in Annex II, together with a link providing access to the full text of the measure, including its amendments, within 20 working days following its entry into force, via the Commission’s electronic notification system; b. Annual report (Reg (EC) 794/2004) in electronic form, on the application of GBER, containing the information indicated in that Regulation, in respect of each whole year or each part of the year during which GBER applies.	

For definitions on concepts: article 2 (pay attention to the new definition of undertaking in difficulty)

B. Specific conditions for aid for research and development and innovation

ARTICLE 25 AID FOR RESEARCH AND DEVELOPMENT PROJECTS	COMPLIANCE CHECK (OK?)
Aid for research and development projects, including projects having received a Seal of Excellence quality label under the Horizon 2020 or under the Horizon Europe programme and co-funded research and development projects and, where applicable, aid for co-funded Teaming actions, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled. (§1)	
Activities eligible to receive aid	
• The aided part of the research and development project shall completely fall within one or more of the following categories (§2): a) fundamental research; b) industrial research; c) experimental development; d) feasibility studies.	
Eligible costs	
• Eligible costs of R&D allocated to a specific category of R&D shall be following (§3): a) Personnel costs: researchers, technicians and other supporting staff to the extent employed on the project; b) Costs of instruments and equipment; to the extent and for period used for the project. If not used for their full life for the project, only the depreciation costs corresponding to the life of the project; based on generally accepted accounting principles. c) Costs for of buildings and land; to the extent and for the duration period used for the project. Buildings: only depreciation costs corresponding to the life of the project; based on generally accepted accounting principles. Land; costs of commercial transfer or actually incurred capital costs. d) Costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;	

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e) Additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project. • The eligible costs for feasibility studies shall be the costs of the study (§4)	
Aid intensity	
• Aid intensity for each beneficiary no more than (§5): a) 100 % of the eligible costs for fundamental research; b) 50 % of the eligible costs for industrial research; c) 25 % of the eligible costs for experimental development; d) 50 % of the eligible costs for feasibility studies. • Bonuses: Aid intensities for industrial research and experimental development may be increased up to 80 % of the eligible costs as follows (§6): a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises; b) by 15 percentage points if one of the following conditions is fulfilled: i. the project involves effective collaboration: - between undertakings of which at least one SME, or project carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or - between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results; ii. project results widely disseminated (through conferences, publication, open access repositories, or free or open source software) • Aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.	

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ARTICLE 26 INVESTMENT AID FOR RESEARCH INFRASTRUCTURES	COMPLIANCE CHECK (OK?)
Compatible and exempted from notification if general compatibility conditions (Chapter I) and conditions of this Article apply (§1)	
If the infrastructure pursues both economic and non-economic activities; financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles (§2)	
Market price is charged for the operation or use of the infrastructure (§3)	
Access is open to several users on a transparent and non-discriminatory basis. Preferential access under more favourable conditions may be granted to undertakings which have financed at least 10% of the investment costs in proportion to their contribution to the investment costs; and the preferential access conditions are made publicly available (§4)	
Eligible costs: investment costs in intangible and tangible assets (§5)	
Aid intensity not to exceed 50 % of the eligible costs (§6)	
If public funding for both economic and non-economic activities; Member States must put in place monitoring and claw-back mechanism to ensure that applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid (§7)	

ARTICLE 28 INNOVATION AID FOR SMEs	COMPLIANCE CHECK (OK?)
Compatible and exempted from notification if general compatibility conditions (Chapter I) and conditions of this Article apply (§1)	
Eligible costs (§2): - costs for obtaining, validating and defending patents and other intangible assets; - costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel; - costs for innovation advisory and support services.	
Aid intensity must not exceed 50 % of the eligible costs (§3).	

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| <ul style="list-style-type: none">• In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100 % of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200 000 per undertaking within any three year period (§4). | |
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